

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	CR. NO. 2:08-cr-49-MEF
	)	
RICHARD JAMES MARSHALL	)	

UNITED STATES' RESPONSE TO MOTION TO SUPPRESS EVIDENCE

Comes now the United States of America, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and files the instant Response to Defendant Richard James Marshall's Motion to Suppress Evidence. (Doc. # 11.) For the reasons set forth below, the United States submits that the motion to suppress should be denied absent an evidentiary hearing.

**I. BACKGROUND<sup>1</sup>**

On June 28, 2005, Second Judicial Drug Task Force Commander Chris West<sup>2</sup> and Task Force Officer G. LaShawn Hutson<sup>3</sup> were investigating drug activity in Lowndes County, Alabama. West had received information that Defendant was selling crack cocaine and marijuana at his residence so West and Hutson, dressed in plain clothes and driving an unmarked Lincoln Town car, went to Defendant's residence to attempt a "knock-and-talk" investigation. The "knock-and-talk" proved unsuccessful as no one answered when West and Hutson knocked on the door of Defendant's residence. West and Hutson then departed Defendant's residence and proceeded to drive toward

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<sup>1</sup> Because hearsay is permitted in this matter, the United States submits exhibits supporting its motion. *See* Fed. R. Evid. 104(a).

<sup>2</sup> West is also a deputy with the Lowndes County Sheriff's Department with the rank of Lieutenant.

<sup>3</sup> At all relevant times, Hutson was an officer of the Hayneville Police Department.

another location to find Defendant.

At approximately 1:00 p.m., West and Hutson were traveling North on Lowndes County Road 7, with West driving and Hutson in the front passenger seat, when they observed Defendant driving southbound in an older model, blue, Chevrolet Nova with a person, later identified as Defendant's cousin, Kelvin Jerome Carmichael, riding in the front passenger seat. Having received information that Defendant drove such a vehicle, West made a U-turn and proceeded closer to Defendant's vehicle. West observed that Defendant was not wearing a seatbelt. West thus concluded that there was probable cause to stop Defendant's vehicle so he initiated a traffic stop by activating and placing a portable, law enforcement blue light on the dashboard of the unmarked vehicle. Defendant did not stop his vehicle.

With the blue light activated, West continued to initiate a traffic stop by pursuing Defendant's vehicle. On two occasions during the chase, West drove the unmarked vehicle, with its windows open, alongside Defendant's vehicle, which also had its windows open.<sup>4</sup> On the first occasion, Hutson, identifying himself as law enforcement by holding his badge up in one hand, yelled to Defendant to pull over. Despite Hutson's request, Defendant continued to drive and verbally refused to stop the vehicle. On the second occasion, Hutson, while holding his badge up in one hand and the activated blue light up in the other hand, and West, while holding his badge up in one hand, both yelled to Defendant to pull over. Notwithstanding law enforcement's visual and audible signals to Defendant to bring his vehicle to a stop, Defendant verbally refused to stop his vehicle and continued to flee.

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<sup>4</sup> During these occasions, the passenger side of West's vehicle was in close proximity and parallel to the driver side of Defendant's vehicle.

At one point in the chase, Defendant threw what appeared to be drug evidence out of the driver side of his vehicle. The evidence, which West believed to be a plastic bag containing narcotics, hit the windshield of West's vehicle.<sup>5</sup> After pursuing Defendant's vehicle for another couple miles, West forced Defendant's vehicle to exit the highway and a traffic stop was conducted. After Defendant's vehicle was stopped, Defendant appeared to be under the influence of a controlled substance, conducted himself in an extremely violent manner, and had to be forced to the ground to be handcuffed. After placing Defendant in handcuffs, West looked inside Defendant's vehicle and observed a .357 chrome revolver<sup>6</sup> lying in plain view on the front, bench-style seat, next to where Defendant had been seated. West also observed bullets lying on the floorboard and in the open ashtray of Defendant's vehicle. Hutson, after placing Carmichael in handcuffs, also looked inside Defendant's vehicle and observed the firearm and ammunition lying in plain view. Marshall received a courtesy warning for attempting to elude law enforcement and failure to wear a seat belt. (Ex. 1.)

## II. ARGUMENT

### A. No Evidentiary Hearing is Required to Resolve Defendant's Motion to Suppress.

The United States contends that no evidentiary hearing is required since the critical facts surrounding the traffic stop are not in dispute and the matter can be resolved on the record alone. "The Constitution does not impose a *per se* rule requiring an evidentiary hearing in every case." *United States v. Brown*, 441 F.3d 1330, 1349 -1350 (11<sup>th</sup> Cir. 2006) (citing *Watkins v. Sowders*, 449

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<sup>5</sup> Subsequently, West retrieved this evidence and submitted it for analysis. Lab results on the evidence indicated that neither fingerprints nor evidence of a controlled substance were found.

<sup>6</sup> This firearm was loaded.

U.S. 341, 349 (1981)); *see United States v. Smith*, 546 F.2d 1275, 1279-80 (5<sup>th</sup> Cir. 1977) (holding that “[a]n evidentiary hearing is not required where none of the critical facts are in dispute and the facts as alleged by the defendant if true would not justify the relief requested” (quotation marks omitted)).<sup>7</sup>

Here, Defendant’s motion failed to allege sufficient facts to warrant a hearing on his claim that suppression is appropriate. In his motion, Defendant alleges that law enforcement stopped him “for violating Alabama’s seat belt requirement” (Doc. # 11 at 1-2) and notes that he was issued a courtesy warning for attempting to elude and failing to wear a seat belt (*Id.* at 2). Defendant then argues in his motion that no probable cause existed to stop his vehicle for attempting to elude law enforcement because Defendant did not know that West and Hutson were law enforcement.<sup>8</sup> (Doc. # 11 at 4-5.) In his motion, Defendant conspicuously ignores the fact that West had probable cause to believe that Defendant was not wearing a seatbelt, as identified in the courtesy warning. (*See Ex.* 1.) Although Defendant asserts in his motion that he was operating his vehicle “in compliance with all Alabama motor vehicle laws” (Doc. # 11 at 1) and argues that he “and his passenger utilized the original seat belt restraints manufactured in the 1976 vehicle” (*Id.* at 5), Defendant’s actual sworn testimony proves the contrary. Indeed, Defendant testified in a deposition that neither he nor the

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<sup>7</sup> In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11<sup>th</sup> Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

<sup>8</sup> Contrary to Defendant’s assertion, Carmichael provided a written statement to law enforcement indicating that “by the time [he] looked for [himself at the vehicle alongside Defendant’s vehicle] and realized that it was the police [he] advised [sic] [his] cousin to pull over. . . .” (Ex. 2)

passenger, Carmichael, were wearing seatbelts during the event at issue. (Ex. 3 at 28-29.)<sup>9</sup> Because Defendant's own testimony does not contradict, but rather supports, the reasoning proffered by West for initiating the traffic stop (i.e., the seat belt violation), the critical fact at issue is not in dispute and an evidentiary hearing is not necessary.<sup>10</sup> *See United States v. Cooper*, 203 F.3d 1279, 1285 (11th Cir. 2000) (affirming denial of motion for an evidentiary hearing where underlying motion to suppress was "wholly lacking in sufficient factual allegations"). Accordingly, in the interest of preserving judicial resources and time, the United States submits that Defendant's motion can be resolved without an evidentiary hearing.

**B. The Court Should Deny Defendant's Motion Because Probable Cause Existed to Believe that a Traffic Violation Occurred.**

Defendant argues in his motion to suppress that the traffic stop was pretextual and conducted without reasonable suspicion or probable cause. It is well-established that:

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a "seizure" of "persons" within the meaning of this provision. An automobile stop is thus subject to the constitutional imperative that it not be "unreasonable" under the circumstances. As a general matter, the decision to stop an automobile is reasonable where the police

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<sup>9</sup> Defendant has filed suit against West and Hutson individually in this Court under 42 U.S.C. § 1983. *See Marshall v. West*, 2:06-cv-701-ID. Defendant's deposition transcript is a public document as it was submitted as evidence in support of and in opposition to the motions for summary judgment filed by West and Hutson. *See Marshall*, 2:06-cv-701-ID at Doc. # 30, Ex. 1; Doc. # 33, Ex. E; Doc. # 38, Ex. 1. Furthermore, in the initial discovery provided to Defendant, the United States included a copy of Defendant's response to West's requests for admissions wherein Defendant admitted to not wearing a seat belt during the event in question. (Ex. 4 at ¶ 6.)

<sup>10</sup> The United States contends that Defendant should not be allowed to make inaccurate allegations in a motion to suppress simply in order to engage in a fishing expedition with government witnesses during a suppression hearing when the critical facts are not in dispute.

have probable cause to believe that a traffic violation has occurred.

*Whren v. United States*, 517 U.S. 806, 809-10 (1996) (citations omitted).

The United States submits that Defendant's challenge to the legality of the stop is without merit. "Law enforcement [officers] may stop a vehicle when there is probable cause to believe that the driver is violating any one of the multitude of applicable traffic . . . regulations relating to the operation of motor vehicles." *United States v. Cooper*, 133 F.3d 1394, 1398 (11th Cir. 1998) (internal citation omitted). In this case, West initiated a traffic stop of Defendant's vehicle because he observed that Defendant, the driver, was not wearing his seatbelt<sup>11</sup> which is a violation of Alabama's motor vehicle and traffic laws. *See* Ala. Code § 32-5B-4 (1975) ("Each front seat occupant of a passenger car manufactured with safety belts . . . shall have a safety belt properly fastened about his body at all times when the vehicle is in motion."). Hence, West had probable cause to stop Defendant's vehicle and the stop of the vehicle was lawful.<sup>12</sup>

Further, Defendant's argument that the stop was pretextual is unavailing as West's motive is immaterial to the objective Fourth Amendment inquiry. As elucidated by the Eleventh Circuit, "ulterior motives will not invalidate police conduct based on probable cause to believe a violation of the law occurred." *Draper v. Reynolds*, 369 F.3d 1270, 1275 (11<sup>th</sup> Cir. 2004); *see also Whren*, 517 U.S. at 813 (foreclosing any argument that "the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved"); *United States v. Robinson*,

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<sup>11</sup> (Ex. 5 at 19.) This exhibit was submitted as evidence in support of and in opposition to the motions for summary judgment filed by West and Hutson. *See Marshall*, 2:06-cv-701-ID at Doc. # 30, Ex. 2; Doc. # 33, Ex. A ; Doc. # 38, Ex. 3.

<sup>12</sup> Because Defendant does not challenge the search of the vehicle nor seizure of the firearm, the United States pretermits argument on those issues.

2008 WL 874833, \*4 (11<sup>th</sup> Cir. 2008) (“When an officer has probable cause to believe that a traffic violation has occurred the decision to stop a vehicle will not violate the Fourth Amendment, regardless of the officer’s subjective intent or motivation.”) (citation omitted). Thus, because West possessed probable cause to believe that Defendant committed a traffic violation, the stop was not violative of the Fourth Amendment.

### **III. CONCLUSION**

For the above reasons, the United States respectfully requests that the Court deny Defendant’s Motion to Suppress.

Respectfully submitted this the 9th day of June, 2008.

LEURA G. CANARY  
UNITED STATES ATTORNEY

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FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

UNITED STATES OF AMERICA	)	
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RICHARD JAMES MARSHALL	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on June 9, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Aylia McKee.

Respectfully submitted,

LEURA G. CANARY  
UNITED STATES ATTORNEY

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# EXHIBIT 1

SECOND JUDICIAL DRUG TASK FORCE

SERVING BUTLER, CRENSHAW AND LOWNDES COUNTIES  
146 EAST FOURTH STREET  
LUVERNE, ALABAMA 36049  
334-335-3340

COURTESY WARNING

DATE 6-30-05 TIME 2:00 PM  
For: 6-24-05

SPEEDING \_\_\_\_\_ MPH \_\_\_\_\_ MPH ZONE

IMPROPER LANE USAGE

FAILURE TO YIELD

IMPROPER TAG

FAILURE TO SIGNAL

RED LIGHT

FOLLOWING TO CLOSE

STOP SIGN

IMPROPER TURN

DEFECTIVE EQUIPMENT \_\_\_\_\_

OTHER/REMARKS Attempted to Elude, No Seat Belt

MAKE OF VEHICLE Chevrolet YEAR 1971 COLOR Blue

VEHICLE TAG # \_\_\_\_\_ STATE AL.

LOCATION  Hwy 21 S. Lowndes County

THIS IS A COURTESY WARNING ONLY AND WILL NOT REFLECT ON YOUR OPERATORS LICENSE

[Signature]  
VIOLATOR

6018769 STATE AL.  
DRIVERS LICENSE #

[Signature]  
AGENT

ID DE-1

THE LIFE YOU SAVE MAY BE YOUR OWN



# EXHIBIT 2

LOWNDES COUNTY  
SHERIFF'S DEPARTMENTINTERVIEW  
SHEET

1. NAME (Last, First, Middle) <i>Germichael, Kelvin Jerome</i>				2. FILE NUMBER			
3. ALIAS(ES)/NICKNAME(S) <i>"K.C."</i>		4. DATE <i>6-28-05</i>	S <input checked="" type="checkbox"/> T <input checked="" type="checkbox"/> S M <input checked="" type="checkbox"/> W <input checked="" type="checkbox"/> F	TIME <i>3:25pm</i>	5. PLACE OF INTERVIEW <i>L.C. Det. Facility</i>		
6. HOME ADDRESS <i>3571 Wilmslow Rd. Montgomery, AL</i>				7. HOME PHONE <i>M. Marshall - Robt (334) 281-6733 (mum)</i>			
8. NAME & ADDRESS OF EMPLOYER				9. BUSINESS PHONE			
10. RACE <i>Blk</i>	11. SEX <i>M</i>	12. D.O.B. <i>9-25-80</i>	13. P.O.B. <i>Montgomery</i>	14. SOC <i>418-15-5022</i>	15. DLN	16. STATE	
17. HGT <i>5'10</i>	18. WGT <i>215</i>	19. HAIR <i>Blk</i>	20. EYES <i>Bru</i>	21. SCARS, MARKS, TATTOOS, AMPUTATIONS <i>"Flaco" Left Bicep</i>			
22. VEH. YEAR	23. MAKE	24. MODEL	25. COLOR	26. VIN	27. LICENSE	28. STATE	

## 29. STATEMENT

When my cousins got threw taking a motor out we were heading to his house when a car pulled up on the side of us. at first I didn't know who it was and I kept asking my cousin who it was but he said he didn't know but by the time I looked for myself and realized that it was the police I advised my cousin to pull over but by that time we were already sliding off the road. I didn't have a gun or anything because I had just left my aunts house taking a motor I don't know what was thrown out the window because I really weren't paying attention because I was tired from taking a motor out earlier this morning. All I saw was that he put his arm out the window. I saw the gun but it wasn't mine while I was riding with my cousin Richard Marshall. <sup>It was a</sup> (357 revolver chrome) ~~XX~~

30. ACJIC/NCIC CHECK YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		31. FINGERPRINTED YES <input type="checkbox"/> NO <input type="checkbox"/> BY WHAT AGENCY:	
32. SUBJECT <input type="checkbox"/> VICTIM <input type="checkbox"/> WITNESS <input checked="" type="checkbox"/>		33. DATE ENDED <i>6-28-05</i>	
RIGHTS GIVEN BY:		TIME ENDED <i>3:50</i>	34. INTERVIEW CONDUCTED BY: <i>[Signature]</i>
<i>6/28/05 - 3:50 PM</i>		35. PAGE OF	

GOVERNMENT  
EXHIBIT

2

# EXHIBIT 3

## **DEPOSITION OF RICHARD MARSHALL**

**November 14, 2007**

**Pages 1 through 156**

### **PREPARED BY:**

**Haislip, Ragan, Green, Starkie & Watson, P.C.**  
**566 South Perry Street**  
**Post Office Box 62**  
**Montgomery, AL 36104**  
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15	DEPOSITION OF RICHARD MARSHALL, taken	15	
16	pursuant to stipulation and agreement before Lyn	16	*****
17	Daugherty, ACCR #66, Certified Court Reporter and	17	
18	Commissioner for the State of Alabama at Large, in	18	
19	the Law Offices of Webb & Eley, 7475 Halcyon Pointe	19	
20	Drive, Montgomery, Alabama, on Wednesday, November	20	
21	14, 2007, commencing at approximately 10:00 a.m.	21	
22	*****	22	
23		23	
Page 2		Page 4	
1	APPEARANCES	1	STIPULATIONS
2	FOR THE PLAINTIFF:	2	It is hereby stipulated and agreed by and
3	Mr. Jay Lewis	3	between counsel representing the parties that the
4	Mr. Fred L. Clements	4	deposition of RICHARD MARSHALL is taken pursuant to
5	LAW OFFICES OF JAY LEWIS	5	the Federal Rules of Civil Procedure and that said
6	Attorneys at Law	6	deposition may be taken before Lyn Daugherty,
7	847 South McDonough Street	7	Certified Shorthand Reporter, and Commissioner for
8	Montgomery, Alabama 36104	8	the State of Alabama at Large, without the
9		9	formality of a commission, that objections to
10	FOR THE DEFENDANT WEST:	10	questions other than objections as to the form of
11	Mr. Gary Wilford	11	the question need not be made at this time but may
12	Mr. Daryl L. Masters	12	be reserved for a ruling at such time as the said
13	WEBB & ELEY, P.C.	13	deposition may be offered in evidence or used for
14	Attorneys at Law	14	any other purpose by either party provided for by
15	7475 Halcyon Pointe Drive	15	the Statute.
16	P.O. Box 240909	16	It is further stipulated and agreed by and
17	Montgomery, Alabama 36124	17	between counsel representing the parties in this
18	*****	18	case that the filing of said deposition is hereby
19	EXAMINATION INDEX	19	waived and may be introduced at the trial of this
20		20	case or used in any other manner by either party
21	RICHARD MARSHALL	21	hereto provided for by the Statute regardless of
22	BY MR. WILFORD ..... 5	22	the waiving of the filing of the same.
23	BY MR. LEWIS ..... 153	23	It is further stipulated and agreed by and
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	MAR		
	Defendant		
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<p>1 between the parties hereto and the witness that the 2 signature of the witness to this deposition is 3 hereby waived. 4 ***** 5 RICHARD MARSHALL 6 The witness, after having first been duly sworn 7 to speak the truth, the whole truth and nothing but 8 the truth testified as follows: 9 EXAMINATION 10 BY MR. WILFORD: 11 Q. Would you please state your name for the 12 record, sir. 13 A. Richard Marshall. 14 Q. Mr. Marshall, my name is Gary Wilford, and 15 together with Daryl Masters, who is also 16 here in the room, we're representing the 17 defendants that you have sued in this 18 case -- well, excuse me -- one of the 19 defendants that you've sued in this case, 20 Chris West. Where do you live? 21 A. Lowndes County, Farmersville. 22 Q. How long have you lived there? 23 A. Basically all my life.</p>	<p>1 to get down. If I ask a question that you 2 don't understand, please let me know and 3 I'll be happy to rephrase it, try to put it 4 another way so that you know exactly what 5 it is that I'm asking you; all right? 6 A. Okay. 7 Q. Because when I ask you a question and you 8 give me an answer, I'm expecting that you 9 understood my question. Can we have that 10 understanding? 11 A. Okay. 12 Q. This isn't an inquisition. If you need a 13 break, if you need to talk to your lawyer, 14 get something to drink, whatever the case 15 may be, let me know and we can take a 16 break; all right? 17 A. Okay. 18 Q. And we'll probably do it on our end once or 19 twice as well. 20 A. All right. 21 Q. Other than your lawyers, who are with you 22 here today, have you spoken with anyone to 23 prepare for your deposition today?</p>
Page 6	Page 8
<p>1 Q. Have you ever given a deposition before? 2 A. No, sir. 3 Q. Let me cover just a few ground rules here. 4 As you can see, we've got a court reporter, 5 and one of the things that she's doing is 6 she's taking down everything that we're 7 saying in the room here today; okay? And 8 I'm going to be asking you some questions 9 and you're going to be answering those 10 questions for me. And when you do that, 11 because we've got the court reporter here, 12 there's a couple of things we need to keep 13 in mind. The first thing is let's try not 14 to talk over the top of each other because 15 it makes it difficult for her to get a good 16 transcription down. Wait for me to ask my 17 question completely and then go ahead and 18 give me a verbal response. And by that I 19 mean a yes, no, or whatever it may be. 20 Shaking your head and saying huh-uh and 21 uh-huh as we tend to do in normal 22 conversation is, again, one of those things 23 that's kind of hard for the court reporter</p>	<p>1 A. No, sir. 2 Q. I noticed when you came in this morning I 3 saw you and Mr. Carmichael walking up 4 together. Did y'all ride in together 5 today? 6 A. Yes, sir. 7 Q. Did y'all talk about this case on the ride 8 up? 9 A. No, sir. 10 Q. Have you ever talked to Mr. Carmichael 11 about this case? 12 A. No, sir. 13 Q. At any time? 14 A. No, sir. 15 Q. Are you related to Mr. Carmichael? 16 A. Yes. My cousin. 17 Q. Cousin? 18 A. (Witness nods head). 19 Q. Did you review any documents in preparing 20 for your deposition today? 21 A. Not today, but I have -- through my lawyer 22 I have. 23 Q. To prepare for this deposition?</p>

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1 A. Not to prepare for the deposition, but for  
2 the case.  
3 Q. What documents did you review?  
4 A. Just basically disclosure, whatever from  
5 the other party.  
6 Q. The information that we gave you?  
7 A. Yeah.  
8 Q. Anything that you provided your attorneys,  
9 any documents you provided your attorneys?  
10 A. None other than what y'all requested.  
11 Q. What's your date of birth, sir?  
12 A. 2/24/74.  
13 Q. And how old does that make you? I'm not  
14 very good at math.  
15 A. 33.  
16 Q. Where were you born?  
17 A. Lowndes County. Well, Farmersville through  
18 the -- what did they call it back then?  
19 Housewife? Selma Hospital is where I was  
20 taken. I was born at home.  
21 Q. With a midwife?  
22 A. Midwife, yeah.  
23 Q. Okay. I got you.

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1 Are you married?  
2 A. No, sir.  
3 Q. Have you ever been married?  
4 A. Yes, sir.  
5 Q. How many times have you been married?  
6 A. Once.  
7 Q. And who were you married to?  
8 A. Stephanie Mallory.  
9 Q. When were y'all married?  
10 A. In '97. May, I think.  
11 Q. How long did y'all stay married?  
12 A. Well, the divorce hasn't been finalized.  
13 Q. So technically you're still married to her;  
14 is that right?  
15 A. Yes.  
16 Q. When did y'all file for divorce?  
17 A. Well, she was in the service. She was  
18 really supposed to be handling that. And I  
19 haven't really been in contact with her  
20 over the years. Just hasn't been  
21 finalized.  
22 Q. When was the last time that y'all lived  
23 together?

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1 A. We never actually lived together. She was  
2 in the service at the time. Never shared a  
3 residence.  
4 Q. All right. Do you work now, sir?  
5 A. No, sir.  
6 Q. What was the last job that you held?  
7 A. M & M Logging last -- I think I was laid  
8 off January of last year.  
9 Q. January of '06?  
10 A. Yes, sir.  
11 Q. How long did you work for them?  
12 A. I think I was employed around August '05,  
13 somewhere August '05.  
14 Q. And worked with them until January of '06?  
15 A. Yes, sir.  
16 Q. What did you do for them?  
17 A. I was a topper. Operate power saw.  
18 Q. How much did you get paid there?  
19 A. I was making \$10 an hour.  
20 Q. Who was your supervisor?  
21 A. David Matthews.  
22 Q. Did you work prior to August of '05?  
23 A. The last job before that was Alabama

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1 Power. I got laid off in '04.  
2 Q. Do you remember about what month that was?  
3 A. January.  
4 Q. January is not a good month for you, huh?  
5 A. Well, you know, it was shutdown jobs.  
6 Contract's up. Layoff time.  
7 Q. How long did you work for Alabama Power?  
8 A. I started December the previous year. That  
9 would be '03, December '03.  
10 Q. So that was only about a two-month temp  
11 job? Is that about right?  
12 A. Somewhere around there. I caught the end  
13 part of the contract. I worked through my  
14 uncle. He was the supervisor.  
15 Q. Who was your uncle?  
16 A. Curtis Marshall.  
17 Q. Prior to December of '03, when was the last  
18 time that you worked?  
19 A. I have to say it would have to be Big Lots  
20 in Montgomery. I think that's what ...  
21 Q. When did you start working for Big Lots?  
22 A. I would say September of '99.  
23 Q. And you worked for them until when?

Page 13	Page 15
<p>1 A. I want to say November -- I think it was 2 November 2000, somewhere along in there. 3 Q. What did you do for Big Lots? 4 A. Forklift operator. 5 Q. Forklift operator? 6 A. Yeah. 7 Q. And what did you do for Alabama Power? Let 8 me go back to that. 9 A. I was a cement finisher helper. Mixed 10 mortar, poured concrete. 11 Q. And what did you get paid when you were at 12 Alabama Power? 13 A. I was making 15.50, something like that. 14 Q. What was your rate of pay at Big Lots? 15 A. Start pay was 7.50 and end off at like \$10. 16 Q. Have you ever owned your own business? 17 A. No, sir. 18 Q. Never been self-employed? 19 A. Not really. Well, I contract barber, a 20 trade of mine, hair cutting. But I never 21 owned my own business. 22 Q. When did you do that? 23 A. '93 out of high school a couple of years</p>	<p>1 Lowndes County pretty much all your life. 2 How long have you lived at that address? 3 A. That's my mother's address. Most all my 4 life I stayed next door with my grandmother 5 most of my life until I moved out with a 6 friend or two. 7 Q. Where were you living in 2005? 8 A. Still Lowndes County off of Highway 21 with 9 a friend. 10 Q. The whole year? 11 A. Yeah. Yeah. 12 Q. What's the address at your grandmother's 13 house that you said is next door? 14 A. It's probably going to be -- Probably -- 15 I'm not sure. The address has changed. It 16 used to be Route 2, Box 140, but I'm not 17 sure. I'm not sure right now. I know 18 that's the old address, Route 2, Box 140. 19 Q. Do you have any children, Mr. Marshall? 20 A. Yes. 21 Q. How many children do you have? 22 A. Two boys. 23 Q. Are any of them 19 or older?</p>
Page 14	Page 16
<p>1 off and on. 2 Q. Did you graduate from high school? 3 A. Yes, sir. 4 Q. What high school did you graduate from? 5 A. Central High, Hayneville. 6 Q. What year did you graduate? 7 A. '92. 8 Q. Have you ever attended a college? 9 A. Briefly J.P. Tech for barbering. But I 10 found out I have to have a license to cut 11 hair. Went straight to the barber shop. 12 Q. And that was here in Montgomery; right? 13 A. Yeah. 14 Q. When did you attend J.P. Tech? 15 A. I think it was '93. 16 Q. Any other college or trade school that you 17 have? 18 A. No, sir. 19 Q. Now, you live at 64 Youngblood Road in 20 Farmersville; is that right? 21 A. Yes, sir. 22 Q. And how long did you tell me that you've 23 lived there? You said you've lived in</p>	<p>1 A. No, sir. 2 Q. Do you have a lot of relatives in Lowndes 3 County? 4 A. Fairly, but not a lot. Close relatives. 5 MR. WILFORD: Jay, can we get a 6 stipulation, just for the 7 venire information, that he'll 8 give us a list of relatives in 9 the middle district? 10 MR. LEWIS: Sure. 11 MR. WILFORD: That will save us 12 some time. 13 Q. Are you a member of a trade union? 14 A. No, sir. 15 Q. Do you go to church? 16 A. I used to. I haven't been in a while. 17 Q. When you went to church, what church did 18 you attend? 19 A. First Baptist in Farmersville. 20 Q. Are you a member of any social 21 organizations like, you know, Elks, VFW, 22 anything like that? 23 A. No, sir.</p>

Page 17

1 Q. Other than this lawsuit that we're here on  
2 today, have you ever been a party in any  
3 other lawsuit either as a plaintiff or a  
4 defendant?  
5 A. No, sir.  
6 Q. So this is your first one?  
7 A. Yes.  
8 Q. We had asked you in the interrogatories if  
9 you had ever been arrested before, and you  
10 gave us three arrests; one in April 25th --  
11 25 of '97 in Butler County, the second one  
12 was the one that we're here -- I'm sorry --  
13 the second one was in '98 in Tuscaloosa,  
14 and the third one was the one that we're on  
15 here today. Do you have any other arrests  
16 besides those?  
17 A. No, sir.  
18 (Defendant's Exhibit 1 was marked  
19 for identification.)  
20 Q. Let me show you what I'm going to mark as  
21 Defendant's Exhibit 1. Let me give you  
22 just a minute to take a look at that,  
23 Mr. Marshall.

Page 18

1 (Brief pause.)  
2 Q. Have you had a chance to take a look at  
3 that?  
4 A. Yeah.  
5 Q. Does that refresh your recollection as to  
6 any other arrests you might have had?  
7 A. Yeah. I forgot about that. Seat belt,  
8 whatever it was. I think it was June -- I  
9 want to say June.  
10 Q. June of this year?  
11 A. Yeah.  
12 Q. Were you actually incarcerated as a result  
13 of that arrest? Put in jail?  
14 A. Yeah. I was taken in for three days, but I  
15 got a chance to talk to the judge. It was  
16 a miss -- following the incident we're here  
17 now on. They suspended my license for a  
18 ticket that I already sat out while I was  
19 in there. She took the ticket up plus the  
20 ticket that they wrote me that day and  
21 released me.  
22 Q. So you spent two days in jail on this  
23 charge and then the judge dismissed all the

Page 19

1 charges?  
2 A. Yes.  
3 Q. Is that what you're telling me?  
4 A. Yeah.  
5 Q. Do you remember who it was that arrested  
6 you on this June of '07 arrest?  
7 A. The officer -- my first time seeing him.  
8 But they did call Shawn Hutson up. When  
9 they ran my name, he was the first officer  
10 pulled up. So they pulled him up and they  
11 took me in.  
12 Q. Oh, you're saying Shawn Hutson came to  
13 the --  
14 A. Yes, sir.  
15 Q. -- to the stop?  
16 A. Yep.  
17 Q. But he wasn't the one who originally pulled  
18 you over; correct?  
19 A. He didn't pull me over.  
20 Q. Do you remember what department that  
21 officer might have worked from, the one who  
22 originally pulled you over?  
23 A. Oh, it was Lowndes County.

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1 Q. Was it the DTF?  
2 A. Just a regular city cop, whatever.  
3 Q. City or county?  
4 A. County, city. I mean, I don't exactly know  
5 which one it was.  
6 Q. Do you remember what color uniform the  
7 officer wore?  
8 A. I want to say dark-colored, dark-colored  
9 uniforms. May be county. In a white  
10 vehicle.  
11 Q. All right. Other than this one and the  
12 three that you told us about in the  
13 interrogatories, any other arrests?  
14 A. No.  
15 Q. On the first arrest in April of '97, did  
16 you have to spend any time in jail on that  
17 one?  
18 A. '97, yeah.  
19 Q. How long did you spend in jail on that one?  
20 A. Approximately two or three weeks before the  
21 charge was dropped.  
22 Q. Do you know why the charges were dismissed?  
23 A. Yeah. It was bogus charges. It was a

Page 21	Page 23
<p>1 misunderstanding between me and my kids'</p> <p>2 mom. She went down there to make false</p> <p>3 statements about a vehicle we purchased</p> <p>4 together, and two or three weeks later she</p> <p>5 came to an agreement and dropped the</p> <p>6 charge.</p> <p>7 Q. You say your kids' mom. Is that the lady</p> <p>8 that you're currently married to?</p> <p>9 A. No, sir.</p> <p>10 Q. What was that lady's name?</p> <p>11 A. Which one?</p> <p>12 Q. The mother of your children.</p> <p>13 A. Shavonne Bailey.</p> <p>14 Q. Do you know where she lives now?</p> <p>15 A. Tuscaloosa.</p> <p>16 Q. Was she the one that was involved in the</p> <p>17 arrest in Tuscaloosa in '98?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Do you have an address on Ms. Bailey?</p> <p>20 A. Not off the top of my head, but I have it.</p> <p>21 I have an address, but I don't know it by</p> <p>22 heart.</p> <p>23 Q. Do you know her phone number?</p>	<p>1 A. Yes, sir.</p> <p>2 Q. Any other times that you've been in jail</p> <p>3 that we haven't talked about?</p> <p>4 A. No, sir.</p> <p>5 Q. Have you ever been treated for alcohol or</p> <p>6 drug addiction?</p> <p>7 A. No, sir.</p> <p>8 Q. Ever been treated for mental illness?</p> <p>9 A. No, sir.</p> <p>10 Q. All right. Let me draw your attention to</p> <p>11 the day that this incident that this</p> <p>12 lawsuit is about occurred. Would you agree</p> <p>13 with me that that was June 28th of 2005?</p> <p>14 A. I would agree.</p> <p>15 Q. Do you recall what day of the week that</p> <p>16 was?</p> <p>17 A. I think it was Tuesday.</p> <p>18 Q. You weren't employed on June 28th of '05,</p> <p>19 were you?</p> <p>20 A. No, sir.</p> <p>21 Q. What did you have to do that day, if</p> <p>22 anything?</p> <p>23 A. Early that morning I went to my aunt's</p>
Page 22	Page 24
<p>1 A. I don't know it by heart either.</p> <p>2 Q. When was the last time you talked to her?</p> <p>3 A. Last month.</p> <p>4 Q. Did you spend any time in jail in</p> <p>5 Tuscaloosa?</p> <p>6 A. Overnight.</p> <p>7 Q. Just overnight?</p> <p>8 A. Yeah.</p> <p>9 Q. That was in Tuscaloosa City Jail?</p> <p>10 A. Yeah.</p> <p>11 Q. Or the county jail?</p> <p>12 A. I'm not sure. I'd have to look at the</p> <p>13 paper and see. It's been a while.</p> <p>14 Q. The arrest in Butler County, were you in</p> <p>15 the Butler County Jail? It says you were</p> <p>16 arrested by the Butler City Police</p> <p>17 Department.</p> <p>18 A. Well, they only have one jail. I don't</p> <p>19 know whether it's under the city or the</p> <p>20 county. It's the only one they have --</p> <p>21 still have.</p> <p>22 Q. All right. And you've been in the Lowndes</p> <p>23 County jail twice; is that correct?</p>	<p>1 house and we pulled the motor and</p> <p>2 transmission out of a vehicle.</p> <p>3 Q. You said we. Who is we?</p> <p>4 A. Me and Kevin and two more cousins.</p> <p>5 Q. Kevin Carmichael?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Who were the other two cousins?</p> <p>8 A. Darrell Howard, Charles Howard.</p> <p>9 Q. And you said you were pulling a motor out</p> <p>10 of a car?</p> <p>11 A. Yeah.</p> <p>12 Q. Was it your aunt's car?</p> <p>13 A. No. It was my cousin's car.</p> <p>14 Q. Were you being paid to do that?</p> <p>15 A. No.</p> <p>16 Q. What time did you get up to go pull that</p> <p>17 motor?</p> <p>18 A. Probably about eight o'clock.</p> <p>19 Q. Did you have anything to eat when you woke</p> <p>20 up?</p> <p>21 A. No, sir.</p> <p>22 Q. Just went straight over there and started</p> <p>23 working on a motor?</p>

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1 A. (Witness nods head).  
2 Q. Did y'all eat anything while you were over  
3 there?  
4 A. No, sir.  
5 Q. Did you have anything alcoholic to drink  
6 while y'all were working on that motor?  
7 A. No, sir.  
8 Q. Take any drugs that day?  
9 A. No, sir.  
10 Q. Prescription drugs?  
11 A. No drugs.  
12 Q. Where is your aunt's house at?  
13 A. It's in Farmersville also.  
14 Q. What's the address there?  
15 A. I don't know the address right off the top  
16 of my head.  
17 Q. How far is it from your house?  
18 A. Approximately a mile.  
19 Q. So did you get that motor out that day?  
20 A. Yes, sir.  
21 Q. How were you dressed?  
22 A. T-shirt and shorts.  
23 Q. Pretty hot that day?

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1 A. Yeah. It was a pretty hot summer. It was  
2 warm that day.  
3 Q. How long did it take y'all to get that  
4 motor out?  
5 A. I think we finished up sometime between  
6 11:30 -- sometime before noon.  
7 Q. What were you going to do after that?  
8 A. Go home and take a bath and get some rest.  
9 Q. And was that -- When you say going home,  
10 was that the 64 Youngblood Road address?  
11 A. No. That's the residence off of 21 where I  
12 was residing at the time.  
13 Q. Off of Highway 21?  
14 A. Yes, sir.  
15 Q. Is that on County Road 7?  
16 A. Off of County Road 7, right off of the  
17 State Highway 21.  
18 Q. Is that at the intersection of County Road  
19 7 and Highway 21?  
20 A. Yeah.  
21 Q. Where did Mr. Howard -- well, the two  
22 Mr. Howards, Darrell and Charles, go after  
23 y'all got done with that engine?

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1 A. They was at their house where we took it  
2 out. That's his mother.  
3 Q. So they didn't go anywhere?  
4 A. They were home already.  
5 Q. Did you have any plans for the rest of the  
6 day other than just going home?  
7 A. No plans.  
8 Q. Was there anybody in the car with you when  
9 you went home?  
10 A. Kevin Carmichael.  
11 Q. Did you stop anywhere between your aunt's  
12 house and where your encounter with the  
13 defendants began?  
14 A. No, sir.  
15 Q. Can you describe for me the vehicle that  
16 you were in?  
17 A. 1971 blue Nova.  
18 Q. '71?  
19 A. Yes, sir.  
20 Q. That's a Chevrolet; right?  
21 A. Yes.  
22 Q. Was that your car?  
23 A. Yes.

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1 Q. How long had you had that car?  
2 A. I think I purchased it in July of '04.  
3 (Defendant's Exhibit 2 was marked  
4 for identification.)  
5 Q. Let me show you what we'll mark as  
6 Defendant's Exhibit 2 after your attorneys  
7 get a chance to look at it. Is that your  
8 car?  
9 A. That's my car.  
10 Q. That's in Defendant's Exhibit 2?  
11 A. That's it.  
12 Q. Who all besides you had access to that car?  
13 A. No one.  
14 Q. So you had the only set of keys; correct?  
15 A. That's correct.  
16 Q. Had you loaned it to anyone recently?  
17 A. No, sir.  
18 Q. I'm sorry?  
19 A. No, sir.  
20 Q. Was that car equipped with seat belts?  
21 A. Yes, sir.  
22 Q. Were you wearing your seat belt that day?  
23 A. No, sir.

<p style="text-align: right;">Page 29</p> <p>1 Q. What about Kevin, was he wearing his?</p> <p>2 A. No.</p> <p>3 Q. Was there any alcohol in that car?</p> <p>4 A. No, sir.</p> <p>5 (Defendant's Exhibit 3 was marked</p> <p>6 for identification.)</p> <p>7 Q. Let me show you what we're going to mark as</p> <p>8 Defendant's Exhibit 3. Let me ask you,</p> <p>9 does that look like the front seat of your</p> <p>10 car on June 28th, 2005, Defendant's Exhibit</p> <p>11 3?</p> <p>12 A. That's it.</p> <p>13 Q. Fairly and accurately depict what was on</p> <p>14 the front seat of your car that day?</p> <p>15 A. Yes, sir.</p> <p>16 Q. What was in that flask that's there on the</p> <p>17 seat next to the gun?</p> <p>18 A. At one time it had contained alcohol, but</p> <p>19 it was no alcohol in it that day.</p> <p>20 Q. Well, what was in it when it was -- What</p> <p>21 was the alcohol that was in there?</p> <p>22 A. Vodka.</p> <p>23 Q. When did you drink that -- or did you --</p>	<p style="text-align: right;">Page 31</p> <p>1 and his books. And I give him a ride home</p> <p>2 right before dark. It started raining even</p> <p>3 harder before we got there. When I pulled</p> <p>4 up in his driveway, he jumped out of the</p> <p>5 car and left the gun.</p> <p>6 Q. How long ago before -- Let me back up and</p> <p>7 regroup. How long before June 28th, 2005</p> <p>8 did you give Mr. McWilliams a ride?</p> <p>9 A. Approximately three or four days earlier</p> <p>10 than that.</p> <p>11 Q. Where does Mr. McWilliams live?</p> <p>12 A. Right off of Highway 21.</p> <p>13 Q. Do you know the address?</p> <p>14 A. Not right offhand.</p> <p>15 Q. How far is it from your house?</p> <p>16 A. Approximately three or four miles.</p> <p>17 (Defendant's Exhibit 4 was marked</p> <p>18 for identification.)</p> <p>19 Q. Let me show you what we'll mark as</p> <p>20 Defendant's Exhibit 4. Does that look like</p> <p>21 the ashtray that was in your Nova?</p> <p>22 A. It is.</p> <p>23 Q. And you can see in there there's some</p>
<p style="text-align: right;">Page 30</p> <p>1 let me back up. Did you drink that?</p> <p>2 A. It's been in there for some while.</p> <p>3 Probably a week prior when I had a drink.</p> <p>4 Q. So you had emptied it about a week prior;</p> <p>5 is that right?</p> <p>6 A. Yeah.</p> <p>7 Q. Now, Defendant's Exhibit 3 also has a gun</p> <p>8 in that picture; correct?</p> <p>9 A. Uh-huh (positive response).</p> <p>10 Q. Was that your gun?</p> <p>11 A. No, sir.</p> <p>12 Q. But you knew it was in the car that day;</p> <p>13 right?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Whose gun is it?</p> <p>16 A. It belongs to D.C. McWilliams.</p> <p>17 Q. Who is D.C. McWilliams?</p> <p>18 A. A friend of mine.</p> <p>19 Q. How did it get in the car?</p> <p>20 A. Well, he left it in there. One day I give</p> <p>21 him a ride when he was having car trouble.</p> <p>22 It was starting to rain. He came along and</p> <p>23 said he wanted to go back and get his gun</p>	<p style="text-align: right;">Page 32</p> <p>1 bullets in there; right?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Why were those bullets in your ashtray?</p> <p>4 A. Like I said, he left the box of bullets in</p> <p>5 there which had got wet from the rain. The</p> <p>6 box was deteriorating, therefore tearing</p> <p>7 up. So I took the bullets, put them in the</p> <p>8 ashtray. And there probably was some on</p> <p>9 the seat also because all of them couldn't</p> <p>10 fit in there.</p> <p>11 Q. If you look back at Defendant's 3,</p> <p>12 I believe it is, I think you're right.</p> <p>13 There is a bullet lying there on the seat,</p> <p>14 isn't there?</p> <p>15 A. Yeah.</p> <p>16 Q. So he left the gun and a box of bullets in</p> <p>17 your car?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And he left it there for three to four</p> <p>20 days?</p> <p>21 A. That's approximately how long it was.</p> <p>22 Q. Had he tried to get ahold of you to get his</p> <p>23 gun and his bullets back prior to that</p>

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1 time?  
2 A. He may have, but I was in and out of my  
3 residence probably and missed him. I even  
4 called him, but I couldn't get up with him.  
5 Q. Does Mr. McWilliams still live there off  
6 Highway 21?  
7 A. I'm certain he does.  
8 Q. Did you have a concealed weapon permit?  
9 A. No, sir.  
10 Q. Had you ever had a concealed weapon permit?  
11 A. No, sir.  
12 Q. How much money did you have on you that  
13 day?  
14 A. 500.  
15 Q. Exactly 500?  
16 A. Yes, sir.  
17 Q. In what denomination were the bills?  
18 A. I know two \$100 bills and the rest were  
19 twenties.  
20 Q. Where did that money come from?  
21 A. I previously was drawing unemployment when  
22 I got laid off from one job and I saved  
23 money. And during that time I was having a

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1 fairly decent streak at the gambling  
2 casinos. During the time I won a  
3 substantial amount of money.  
4 Q. Which casino?  
5 A. White Hall Gaming Casino. Also Biloxi,  
6 Mississippi I won some money.  
7 Q. Which casino in Biloxi?  
8 A. I'm not sure right offhand. I'd have to  
9 check receipts or something. I don't want  
10 to say the wrong one.  
11 Q. When did you win that money?  
12 A. I won the money in Mississippi in '04. The  
13 month I'm not exactly -- I'm not sure of  
14 the month. I won money in White Hall in  
15 '05, March.  
16 Q. Well, how much did you win in Biloxi?  
17 A. About 1600.  
18 Q. And how much at White Hall?  
19 A. 3600.  
20 Q. And you're saying that this money was  
21 left -- what was left of your winnings? Am  
22 I understanding you correctly?  
23 A. Yeah.

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1 Q. Did you report those winnings on your  
2 income tax?  
3 A. I took a waiver out -- tax waiver out each  
4 time.  
5 Q. Tax waiver. You have to explain that to me  
6 because I'm not a gambler.  
7 A. When you have to sign to have your taxes  
8 taken out of winnings to report your W-2s  
9 from the casino.  
10 Q. Right. Okay. But when you filed your  
11 income tax at the end of the year, did you  
12 report that income?  
13 A. I haven't filed but once since '05. I  
14 think child support ended up being on  
15 that. I'm not sure if I had it in there or  
16 not.  
17 Q. Where was that money at?  
18 A. What money?  
19 Q. The \$500 that we're talking about. That's  
20 a good point. When I ask a bad question,  
21 you go right ahead and ask me to clarify.  
22 I'm talking about the \$500 now. Where did  
23 you have that at?

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1 A. In my short right-hand pocket.  
2 Q. Was it in a wallet, or how were you  
3 carrying it?  
4 A. Just together folded.  
5 Q. When was the first time that you remember  
6 seeing the two officers that you ran into  
7 later that day?  
8 A. The first time that I seen two unknown  
9 persons was on County Road 7 immediately  
10 coming from my aunt's house.  
11 Q. That's good. Let's back up and regroup on  
12 that just a minute. Did you turn off of  
13 Highway 21 going down County Road 7 to your  
14 house?  
15 A. I turned off of Highway 16 onto County Road  
16 7 where I met the officers.  
17 (Defendant's Exhibit 5 was marked  
18 for identification.)  
19 Q. Just so I'm clear, I'm going to show you  
20 what we're going to mark as Defendant's  
21 Exhibit 5, which I'll tell you is just a  
22 little map that I got off the Internet of  
23 the area. Kind of centered in it is County

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<p>1 Road 7 and Highway 21 and we'll just kind 2 of refer to that. Now, you said you came 3 off -- was it County Road 16 and onto -- 4 I'm sorry. Let me move all this stuff out 5 of your way. I don't see County Road 16 on 6 that map, and I might not have it zoomed in 7 in enough detail. 8 A. Well, it's -- the road coming from 9 Farmersville I think leads to be County 10 Road 16 and then you make a right on County 11 Road 7. 12 Q. There's Farmersville right there. So does 13 County Road 16 kind of come -- 14 A. Yeah. And you make a right onto County 15 Road 7. Then you make another right on 16 Highway 21. 17 Q. I tell you what. Let me give you my pen 18 here and if you would just kind of draw a 19 little line there from that dot under 20 Farmersville. Just your best guess at how 21 County Road 16 goes into County Road 7. 22 A. It would have to be coming from this 23 direction and make a right on County Road</p>	<p>1 that. 2 A. (Witness complies). 3 Q. All right. So make sure I understand what 4 you're telling me. You left Farmersville 5 where your aunt's house was? 6 A. Yes, sir. 7 Q. Traveled down County Road 16? 8 A. Uh-huh (positive response). 9 Q. Took a right on County Road 7 from County 10 Road 16? 11 A. (Witness nods head). 12 Q. Where did you first see who you later 13 learned to be the defendants in this case? 14 A. Approximately a quarter mile after turning 15 on County Road 7 I met a dark-colored 16 Lincoln Town Car, who I first thought was a 17 drunken driver or something that slowed 18 down, hit the brakes hard. And I didn't 19 know who it was, so I kept driving. 20 Q. Okay. There's a whole bunch of things I 21 need to ask you about there. You said it 22 was a dark-colored Lincoln Town Car? 23 A. Yes, sir.</p>
Page 38	Page 40
<p>1 7. 2 Q. Just draw that to where it intersects into 3 County Road 7. Just make your line go into 4 County Road 7. 5 A. (Witness complies). 6 Q. There we go. That's good. And if you 7 would, just put a 16 under that so we'll 8 know what we're talking about. 9 A. (Witness complies). 10 Q. All right. Now, if you would on here just 11 put a little X about where your house was 12 back in June of '05. 13 A. The residence where I was going to? 14 Q. Yes, sir. 15 A. Well, it's off of Highway 21. Braggs. 16 This is 263 exit. I stayed approximately a 17 mile or two, three miles from the 263 18 exit. So I would have to say somewhere in 19 here approximately. 20 Q. Can you put a little bit larger X so when 21 we copy that? 22 A. (Witness complies). 23 Q. And if you would, just write home under</p>	<p>1 Q. Had you ever seen that car before? 2 A. No, sir. 3 Q. Did it have any distinguishing features on 4 it, like a license plate on the front or 5 anything that stood out in your mind? 6 A. Didn't even pay it no attention. Wasn't 7 registering in my mind. Just another 8 vehicle. 9 Q. Had you passed any vehicles on County Road 10 7 prior to seeing that dark-colored 11 Lincoln? 12 A. No, sir. That's the first vehicle I saw. 13 Q. Had you passed any on County Road 16? 14 A. No, sir. 15 Q. So you're all alone on a road there? 16 A. Yes, sir. 17 Q. All right. You also said that you thought 18 it was a drunk driver. What made you think 19 it was a drunk driver? 20 A. Because immediately upon meeting the car 21 the car slammed on brakes and took a nose 22 dive, and I thought that to be strange at 23 the time. Looked in my rear view mirror,</p>

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1 saw that the car was veering off to the  
2 side of the road. So I thought maybe they  
3 had a flat or something, so I kept driving.  
4 Q. You didn't see it swerving in the road as  
5 it was coming towards you; right?  
6 A. No, sir.  
7 Q. So the only thing that made you think it  
8 was a drunk driver was it slammed on the  
9 brakes and then veered off the road?  
10 A. Yes, sir.  
11 Q. Did you get a look at who was in the  
12 vehicle as it went by you?  
13 A. No, sir.  
14 Q. County Road 7 where you encountered this  
15 dark-colored Lincoln, is that a two-lane  
16 road?  
17 A. It's a small rural road, one lane.  
18 Q. One lane in each direction?  
19 A. Yeah. One lane in each direction.  
20 Q. Did you see any kind of blue lights on the  
21 vehicle when it went by you?  
22 A. There was no lights.  
23 Q. When you say no lights, no blue lights?

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1 A. Right.  
2 Q. It had headlights; right?  
3 A. I'm certain it did.  
4 Q. Had you ever seen Chris West before that  
5 day?  
6 A. No, sir.  
7 Q. How about LaShun Hutson, had you ever seen  
8 him before that day?  
9 A. No, sir.  
10 Q. Did you know of them?  
11 A. I never know of Shawn Hutson, but I have  
12 heard Chris West's name.  
13 Q. You'd heard Chris West's name prior to the  
14 28th of June of '05?  
15 A. Yes, sir.  
16 Q. What did you know about Chris West prior to  
17 June 28 of '05?  
18 A. Only that he was a law enforcement officer.  
19 Q. Do you remember who you heard that from or  
20 how you heard it?  
21 A. No, sir. Just open conversation.  
22 Q. Do you know who might have told you that?  
23 A. No one told me. Just heard it. Just heard

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1 of him.  
2 Q. Did you know he worked with the drug task  
3 force?  
4 A. No, sir.  
5 Q. Other than slamming on the brakes and  
6 veering off the road, did they do anything  
7 else unusual?  
8 A. That's all I know is right then.  
9 Q. You say right then. Did they do anything  
10 else after that?  
11 A. Yeah. Next thing I know is they was upside  
12 my car.  
13 Q. So from the time -- Let me make sure I got  
14 your testimony right. From the time you  
15 saw them slam on brakes and veer off the  
16 road until they were next to you, you  
17 didn't see them. Is that what you're  
18 telling me?  
19 A. Yes, sir.  
20 Q. Were there any cars coming behind that  
21 Lincoln that you saw?  
22 A. No, sir.  
23 Q. Okay. Now, you said they came alongside of

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1 you. How did they do that? Describe that  
2 for me.  
3 A. After seeing the car slam on brakes and,  
4 like I said, I looked in my back mirror and  
5 saw them veer off. I kept driving. Didn't  
6 know what was happening. Approximately 30  
7 seconds to a minute later they had pulled  
8 up beside me in the passing lane. All I  
9 saw was two black males in black T-shirts  
10 trying to flag me to pull over on first  
11 glance.  
12 Q. You said trying to flag you. What were  
13 they doing?  
14 A. I just seen the hand signal (indicating)  
15 and pull over.  
16 Q. Was there anything -- Let me back up. Who  
17 was doing the hand signal? Was it the  
18 passenger or the driver?  
19 A. Passenger.  
20 Q. And just kind of describe what you did a  
21 second ago. For the record you were using  
22 your right hand and kind of pushing at  
23 shoulder level off to the side?

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1 A. Yes, sir.  
2 Q. Did you later learn who the passenger was  
3 that was giving you the hand signal?  
4 A. I believe it was Shawn Hutson.  
5 Q. So Chris West was driving; is that right?  
6 A. I think he was. Had to be.  
7 Q. Was there anybody else in the car besides  
8 those two?  
9 A. No, sir.  
10 Q. Was your window up or down in your car?  
11 A. Down.  
12 Q. Does the air conditioning work in that car?  
13 A. No, sir.  
14 Q. So you had 2 by 55 air conditioning?  
15 A. I mean, wind?  
16 Q. Yeah.  
17 A. Yeah. That's it.  
18 Q. And I'm just going to start referring to  
19 them by name now. We know that based on  
20 your testimony Shawn was the passenger and  
21 Chris was the driver. Did Shawn say  
22 anything to you when he was initially  
23 giving you that hand signal?

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1 A. I really couldn't hear if he had said  
2 anything anyway. As you can see in my  
3 trunk, I had amplifiers and music that was  
4 blasting during the time. I was driving  
5 35, 40 miles per hour. All I could really  
6 see was a hand signal.  
7 Q. Well, did it look like he was trying to say  
8 something?  
9 A. I can't recollect. I can't say that  
10 because it happened so quick. Just a brief  
11 glance and that's all I looked over there.  
12 Q. Let me back up and ask you something here.  
13 In paragraph 16 of your amended complaint  
14 you alleged that you've been robbed  
15 before.  
16 A. Yes, sir.  
17 Q. How many times had you been robbed before?  
18 A. Once.  
19 Q. When was that?  
20 A. August '03.  
21 Q. Where was it?  
22 A. In Montgomery.  
23 Q. What happened?

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1 A. I was at the hotel, Peddler's Inn, and I  
2 had a guy pull a gun on me and demanded  
3 money.  
4 Q. Were you in a car or were you just  
5 walking? Where were you?  
6 A. Coming out my room -- hotel room.  
7 Q. Did he get any money off of you?  
8 A. He took some money.  
9 Q. Did you report it to the police?  
10 A. Yeah. I went in for questioning and made a  
11 statement.  
12 Q. Did they ever catch the guy who did it?  
13 A. Yes.  
14 Q. What was his name?  
15 A. I want to say Jerome Titus.  
16 Q. What happened with Mr. Titus?  
17 A. I guess they prosecuted him or whatever. I  
18 don't know the full extent.  
19 Q. Did you ever have to testify at trial?  
20 A. No. I got a letter from the DA, Ellen  
21 Brooks, saying it wasn't enough evidence or  
22 something. I don't know. It was  
23 dismissed.

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1 Q. So he wasn't convicted?  
2 A. Not to my knowledge.  
3 Q. All right. So that was the only time that  
4 you were robbed previously?  
5 A. Yes, sir.  
6 Q. Have you been robbed since?  
7 A. No, sir.  
8 Q. All right. So we got to the point where  
9 their car -- are they about even with you  
10 going down County Road 7?  
11 A. Yeah. They pulled right up beside me.  
12 Q. Going about 35, 40 miles an hour; is that  
13 right?  
14 A. Yeah. I wasn't driving fast.  
15 Q. What's the speed limit there?  
16 A. Approximately 45, 50 maybe, anywhere in  
17 that range.  
18 Q. About how long did they stay alongside of  
19 you like that?  
20 A. Approximately 10 seconds.  
21 Q. What did they do after that 10 seconds?  
22 A. They veered behind me and trailed me out to  
23 Highway 21.

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1 Q. Did they try to come up alongside of you  
2 again prior to getting to Highway 21?  
3 A. No, sir.  
4 Q. Did you look at them in your rear view  
5 mirror?  
6 A. I took a glance in my rear view mirror and  
7 noticed that they was riding my bumper.  
8 Q. Did you see a blue light at that time?  
9 A. There was no blue light.  
10 Q. Could you see what the two occupants of the  
11 car were doing in your rear view mirror?  
12 A. No, sir. I didn't glance. Just quick  
13 glance to see that they was still behind  
14 me.  
15 Q. Let me back up for just a second. When  
16 they were alongside of you here this first  
17 time, did you say anything to them?  
18 A. On first glance when they pulled up, yeah,  
19 I may have said -- asked them what they  
20 want, not in that nice a way, though.  
21 Q. Not in a nice way?  
22 A. Yeah. Not in a nice way.  
23 Q. Can you tell me exactly what you said?

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1 A. What the fuck y'all want.  
2 Q. Did you think to turn the stereo down?  
3 A. No. Because it was my first understanding  
4 that it was somebody trying to rob me and  
5 I'm not going to be courteous to them.  
6 Q. So you couldn't hear what they were saying  
7 to you; right?  
8 A. No, sir.  
9 Q. And you asked them what you asked them?  
10 A. Yes, sir.  
11 Q. And the stereo is still going the whole  
12 time?  
13 A. Yes, sir.  
14 Q. Did it look like either one of them  
15 responded when you asked them that question?  
16 A. No, sir.  
17 Q. Because you just glanced at them real  
18 quick; right?  
19 A. Yes, sir.  
20 Q. All right. They trailed you all the way up  
21 to Highway 21; correct?  
22 A. Yes, sir.  
23 Q. What did you do when you got to Highway 21?

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1 A. I turned right. Turned going toward my  
2 residence.  
3 Q. Turned right going towards your house?  
4 A. Yes, sir.  
5 Q. Which I guess on this map takes us back to  
6 the west; is that right? I think this is  
7 west over here on the left-hand side.  
8 A. I don't know if it's west or not. All I  
9 knew --  
10 Q. Kind of southwest really?  
11 A. I turned right on Highway 21.  
12 Q. We'll go with that. You turned right on  
13 Highway 21 heading towards your house. Is  
14 there a stop sign there at 7 and 21?  
15 A. Caution light, yield sign.  
16 Q. A yield sign?  
17 A. Uh-huh (positive response).  
18 Q. Was there any traffic coming on Highway 21?  
19 A. No, sir. I didn't see any traffic.  
20 Q. Either way?  
21 A. No, sir.  
22 Q. What is Highway 21? Is it another  
23 two-lane, one lane each way, or is it

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1 four-lane?  
2 A. Two-lane, one lane each way. State  
3 highway.  
4 Q. Did you stop at the intersection of 7 and  
5 21?  
6 A. Brief caution, brake in the road at the  
7 yield sign and proceeded to go right toward  
8 my residence.  
9 Q. Kind of a rolling stop?  
10 A. Yeah. Rolling stop.  
11 Q. Wheels never really came to a complete  
12 rest?  
13 A. No, sir.  
14 Q. And you took the right going onto Highway  
15 21?  
16 A. Yes, sir.  
17 Q. What did the Lincoln do?  
18 A. Still behind me.  
19 Q. It followed you out on Highway 21?  
20 A. Yes, sir.  
21 Q. Did you get a chance to look in your rear  
22 view mirror as you were going down 21?  
23 A. Well, right after turning on Highway 21 the

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<p>1 vehicle pulled up beside me again.  2 Q. So up again on the left-hand side of your  3 vehicle coming in the oncoming traffic  4 lane; is that right?  5 A. Yes, sir.  6 Q. How fast were you going at that time?  7 A. Approximately 55, somewhere around there.  8 Q. What's the speed limit on Highway 21?  9 A. I'm quite sure it's 55.  10 Q. And I should have asked you this before.  11 The rest of the time that you were on  12 County Road 7, did you stay going 35, 40  13 miles an hour?  14 A. Around 35, 40 miles an hour. Because they  15 were bumper to bumper on me.  16 Q. So you sped up a little bit?  17 A. It was a wavy road, so I really didn't want  18 to travel fast.  19 Q. Well, you did speed up a little if you got  20 up to 45; right?  21 A. Well, like I said, I was driving around 35  22 to 45 on County Road 7.  23 Q. Well, were you trying to get them off your</p>	<p>1 Q. Did you see anything besides the weapon?  2 A. No, sir. I just seen the right hand.  3 Q. I'm sorry?  4 A. I just saw his right hand gesturing and I  5 just kept driving.  6 Q. Is that the only hand he had in view?  7 A. That's the only hand I saw.  8 Q. Did he say anything to you?  9 A. I didn't hear him say anything if he did  10 for the music.  11 Q. You still had the music going?  12 A. Yes, sir.  13 Q. Could you tell that he was trying to say  14 anything to you? Could you see his lips  15 moving?  16 A. I didn't have time to just lock on to what  17 he was saying, lips moving, because I'm  18 watching traffic and watch the incident.  19 All I did is glance. When the car pulled  20 up beside me, I glanced, put my eyes back  21 on the highway and kept driving.  22 Q. You just said watching traffic. Are there  23 cars coming now?</p>
Page 54	Page 56
<p>1 bumper at all?  2 A. I wasn't trying to because I knew I  3 couldn't. They was trailing my bumper.  4 And like I said, it was a wavy road. I  5 didn't want to hurt myself.  6 Q. So you turned onto Highway 21 and they came  7 up alongside of you. What happened when  8 they came alongside of you?  9 A. They came alongside me and I saw the same  10 thing again, hand motion and I glanced and  11 kept driving.  12 Q. Was there anything in -- And you said the  13 hand motion. Was that the passenger again,  14 Shawn?  15 A. Yes.  16 Q. Could you see anything that Chris might be  17 doing?  18 A. I didn't have time to just lock in on him.  19 Q. Did Shawn have anything in his hands this  20 time when they pulled up alongside of you  21 on 21?  22 A. On second glance it appeared to be a weapon  23 at a glance and kept driving.</p>	<p>1 A. No cars coming, but I'm looking for a car.  2 Q. So still y'all are the only two vehicles on  3 the road?  4 A. Yes, sir.  5 Q. Describe that weapon that you saw for me.  6 A. I can't describe it. All I know is I saw a  7 weapon. I don't know what brand --  8 Q. Was it a knife? A gun?  9 A. A gun, yeah. A gun.  10 Q. Was it black? Shiny?  11 A. It was black.  12 Q. Big gun? Little gun?  13 A. I don't know. I can't lock in on the  14 size. I glanced at the weapon I saw.  15 Q. Was it pointed at you?  16 A. I can't say that it was pointed at me. All  17 I seen was a hand gesture going like to  18 pull over or whatever.  19 Q. He was gesturing with the gun?  20 A. That's what I saw.  21 Q. Did you say anything to him?  22 A. I didn't say anything else. I was still  23 just driving.</p>

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<p>1 Q. While all this was going on up to this</p> <p>2 point, what's Kevin doing?</p> <p>3 A. Sitting in the seat asking me, Cuz, who is</p> <p>4 this trying to run us off the road? I tell</p> <p>5 him I don't know; looks like somebody</p> <p>6 trying to rob us; I'm not going to stop.</p> <p>7 He was scared.</p> <p>8 Q. Well, I understand that you were driving</p> <p>9 the vehicle. Was he watching them?</p> <p>10 A. He wasn't watching them. He was just aware</p> <p>11 of what was going on.</p> <p>12 Q. Did he tell you at some point that the</p> <p>13 police were behind you?</p> <p>14 A. He didn't tell me that.</p> <p>15 Q. He did not tell you that?</p> <p>16 A. No, sir.</p> <p>17 Q. Well, did he ever tell you to pull over at</p> <p>18 any time?</p> <p>19 A. He didn't tell me to pull over. He's</p> <p>20 asking me who is this and what they trying</p> <p>21 to do. He just said, it looked like</p> <p>22 they're going to run us off the road and</p> <p>23 kill us if we don't pull over.</p>	<p>1 we already had been spun off the road</p> <p>2 before we realized who it was.</p> <p>3 Q. Now, you still had the music going pretty</p> <p>4 good at that time?</p> <p>5 A. The music was going until Chris West turned</p> <p>6 it off.</p> <p>7 Q. Is it possible that you just didn't hear</p> <p>8 what Kevin was saying to you because of the</p> <p>9 music?</p> <p>10 A. It's possible.</p> <p>11 Q. All right. How long did they stay up</p> <p>12 alongside of you the second time?</p> <p>13 A. Still approximately 10 seconds.</p> <p>14 Q. Did you see a blue light this time?</p> <p>15 A. I didn't see a light.</p> <p>16 Q. Did you see a badge?</p> <p>17 A. I didn't see a badge either.</p> <p>18 Q. And you told me before that they were</p> <p>19 wearing black T-shirts. Did those black</p> <p>20 T-shirts have any writing on them?</p> <p>21 A. Not that I can recollect. I just seen it</p> <p>22 was black T-shirts.</p> <p>23 Q. What did they do after that 10 seconds of</p>
Page 58	Page 60
<p>1 (Defendant's Exhibit 6 was marked</p> <p>2 for identification.)</p> <p>3 Q. Let me show you what we'll mark as</p> <p>4 Defendant's Exhibit 6. Let me give you</p> <p>5 just a minute to look at Defendant's</p> <p>6 Exhibit 6.</p> <p>7 (Brief pause.)</p> <p>8 Q. Had you ever seen that document before</p> <p>9 today, Mr. Marshall?</p> <p>10 A. I have.</p> <p>11 Q. When did you get a chance to see that</p> <p>12 document?</p> <p>13 A. When we turned the information over.</p> <p>14 Q. Those initial disclosures; is that right?</p> <p>15 A. Yeah.</p> <p>16 Q. Now, this is a statement that Kevin gave to</p> <p>17 the police that day. And in it he says</p> <p>18 that he saw that it was the police and he</p> <p>19 advised you to pull over. Is it your</p> <p>20 testimony that he didn't tell you to pull</p> <p>21 over?</p> <p>22 A. He didn't tell me to pull over, because by</p> <p>23 the time we both realized it was the police</p>	<p>1 being alongside of you?</p> <p>2 A. Veered back behind me and trailed me</p> <p>3 approximately another mile and a half or</p> <p>4 two and they started to ram the vehicle.</p> <p>5 Q. Between the time that they pulled back</p> <p>6 behind you and as you described the ramming</p> <p>7 started, did you get a chance to look in</p> <p>8 your rear view mirror at them?</p> <p>9 A. I didn't look in the mirror.</p> <p>10 Q. You didn't look again?</p> <p>11 A. (Witness shakes head).</p> <p>12 Q. So you couldn't see anything that they were</p> <p>13 doing back there?</p> <p>14 A. I don't know what they was doing.</p> <p>15 Q. Let me back up again to the second time</p> <p>16 they were beside you. I might have asked</p> <p>17 you this before. If I did, I apologize.</p> <p>18 Did you say anything to the passenger that</p> <p>19 second time?</p> <p>20 A. No, sir.</p> <p>21 Q. Make any motions to him?</p> <p>22 A. I don't remember making any motions. I</p> <p>23 just remember glancing at him and keep</p>

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<p>1 driving.</p> <p>2 Q. While all this was going on, where was this</p> <p>3 gun that's in Defendant's 3?</p> <p>4 A. Laying on the seat.</p> <p>5 Q. About where it is in Defendant's 3?</p> <p>6 A. Approximately somewhere.</p> <p>7 Q. Let me show it to you again. And is</p> <p>8 that -- you can see in the left-hand side,</p> <p>9 is that the steering wheel?</p> <p>10 A. Yes, sir.</p> <p>11 Q. So it's -- is it fair to say that it's</p> <p>12 fairly close to the driver?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Was that gun just out in the open like</p> <p>15 that, or was it tucked up under you</p> <p>16 somehow? How was that gun?</p> <p>17 A. It was down between the seat.</p> <p>18 Q. What do you mean down between the seat?</p> <p>19 A. Approximately somewhere around here where</p> <p>20 it wouldn't be sliding. It was laying</p> <p>21 there.</p> <p>22 Q. You're pointing to the right-hand side what</p> <p>23 looks like seat belts. Are those seat</p>	<p>1 Q. At any time during this pursuit did you</p> <p>2 pick that gun up?</p> <p>3 A. No, sir.</p> <p>4 Q. So it's just there kind of tucked down in</p> <p>5 the seat?</p> <p>6 A. Yeah. Until they was ramming. It probably</p> <p>7 was moving when they was ramming the</p> <p>8 vehicle. That's probably about the only</p> <p>9 time I probably touched it.</p> <p>10 Q. Did the gun move at any time during the</p> <p>11 pursuit? Did it stay here until the</p> <p>12 ramming started?</p> <p>13 A. I'm quite sure it did. But when they was</p> <p>14 ramming the car, my head was jerking. I'm</p> <p>15 quite sure it was moving along with</p> <p>16 everything else on the seat.</p> <p>17 Q. Let's talk about the ramming. Describe for</p> <p>18 me what you mean when you say they rammed</p> <p>19 you.</p> <p>20 A. Like I say, after they pulled beside me for</p> <p>21 the second time, they veered back behind me</p> <p>22 approximately a mile and they started</p> <p>23 hitting -- hitting the back end of my</p>
Page 62	Page 64
<p>1 belts there?</p> <p>2 A. Yeah.</p> <p>3 Q. Those little black things on the right-hand</p> <p>4 side?</p> <p>5 A. Uh-huh (positive response).</p> <p>6 Q. So was it -- How was it in there? You've</p> <p>7 got it barrel down. Describe for me how</p> <p>8 it's in between the seats there.</p> <p>9 A. I'm certain the barrel was in there so it</p> <p>10 wouldn't be moving pointing toward the --</p> <p>11 back in the seat.</p> <p>12 Q. Did you touch the gun at any time while</p> <p>13 this pursuit was going on?</p> <p>14 A. I don't know. I probably touched it if it</p> <p>15 was moving or whatever, but I didn't reach</p> <p>16 for it or nothing.</p> <p>17 Q. Was the gun loaded?</p> <p>18 A. Yes, sir.</p> <p>19 Q. What kind of gun is that?</p> <p>20 A. .357.</p> <p>21 Q. Do you know what kind of bullets were in</p> <p>22 it?</p> <p>23 A. .357 hollow points.</p>	<p>1 vehicle like two or three times. Each time</p> <p>2 it was knocking the car in a wiggling</p> <p>3 motion off the highway.</p> <p>4 Q. How fast were you going at that point?</p> <p>5 A. Initially I probably was going about 55</p> <p>6 until they started ramming me and I was</p> <p>7 losing control of the car and I slowed down</p> <p>8 approximately about 35, 40 miles an hour</p> <p>9 because I didn't want the car to flip out</p> <p>10 of control.</p> <p>11 Q. What part of their car was striking your</p> <p>12 car?</p> <p>13 A. I would have to say their bumper to</p> <p>14 bumper. I wasn't aware of the ramming</p> <p>15 until I was hit.</p> <p>16 Q. Okay. Was it -- And when you say ramming,</p> <p>17 were they hitting you center on, or were</p> <p>18 they off to one side or the other? How was</p> <p>19 that?</p> <p>20 A. They were hitting me center on up until the</p> <p>21 point where they spun me out. And</p> <p>22 that's when they hit me on the driver's</p> <p>23 side bumper and spun me out of control.</p>

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<p>1 MR. WILFORD: Let's take a quick 2 break. We've been going for 3 an hour. 4 (Brief recess was taken.) 5 Q. Okay. When we broke, Mr. Marshall, we were 6 talking about the ramming had begun. About 7 how many times did the Lincoln come into 8 contact with your car? 9 A. First ramming I'm quite sure he rammed me 10 twice -- two or three times. Made the car 11 sort of lose control and then I regained. 12 Q. That's what I want to do. I want to take 13 them one by one so you can tell me what 14 happened each time he made contact with 15 you. The first time that he hit you, was 16 that, again, head-on his front to roughly 17 the center of your bumper; is that right? 18 A. Yes, sir. 19 Q. And how fast were you going at the time 20 when he first hit you? 21 A. I may have been going approximately 45 to 22 55 miles an hour at the first ramming. 23 Q. What did you do when you felt the impact?</p>	<p>1 car after the first hit, what, if anything, 2 did you do? 3 A. Continued to drive. 4 Q. Did you slow down or speed up? 5 A. Yeah. I slowed down. 6 Q. How slow did you get down to? 7 A. Probably I want to say around 30, 35 miles 8 an hour. 9 Q. Did you make any moves to pull the vehicle 10 off the road? 11 A. No. 12 Q. You said your neck got jerked around. Did 13 you come in contact with anything in the 14 car? 15 A. Not -- At that time I didn't. 16 Q. How long did you drive at 35 miles an hour 17 before something else happened? 18 A. Approximately 10 seconds and got rammed 19 again. 20 Q. So this would be ram number two; correct? 21 A. Yes, sir. 22 Q. How did he hit you that time? 23 A. Same way, bumper.</p>
Page 66	Page 68
<p>1 A. Well, on impact it jerked my neck and for a 2 brief moment I lost control of the car like 3 swerved from the ramming. And I looked in 4 the mirror at this time to see what was 5 going on, but I still couldn't see what 6 they was doing back there. I drove 7 approximately another quarter mile. 8 Q. Hang on just a second. You said you looked 9 back in the rear view mirror. About how 10 long did you look? 11 A. Just a glance up after they rammed. 12 Q. Could you see what they were doing? 13 A. No. I couldn't make visual what they were 14 doing. 15 Q. Did you see a blue light? 16 A. No, sir. 17 Q. Did you see any badges? 18 A. No, sir. 19 COURT REPORTER: Can I stop for 20 two seconds? 21 MR. WILFORD: Sure. 22 (Brief pause.) 23 Q. All right. After you got control of the</p>	<p>1 Q. Center on? 2 A. Yes, sir. 3 Q. Do you have any estimate of how fast they 4 were going? Let's go back to the first 5 time he hit you. Do you have any idea how 6 fast he was going when he hit you? 7 A. I would estimate not too much faster than 8 me, because they were riding my bumper the 9 whole time. 10 Q. So he couldn't have accelerated too much 11 before he came in contact; right? 12 A. I guess not. 13 Q. What about the second time, do you have any 14 idea how fast he was going? 15 A. I can't approximate how fast he was going. 16 I just know the impact was variably the 17 same. 18 Q. Did he stay on your bumper between the 19 first and the second impact? 20 A. After the first impact I don't think he was 21 riding my bumper as close. Because like I 22 say, I sort of lost control. He probably 23 fell back a little until I regained control</p>

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1 and then I felt the ram again.  
 2 Q. About how far did he fall back?  
 3 A. I can't say how far because I really didn't  
 4 look back. I just know I was swerving and  
 5 I'm quite sure he wasn't on my bumper while  
 6 I'm swerving.  
 7 Q. Right. When you did that glance into the  
 8 rear view mirror, though, about where was  
 9 he? Was he still back on your bumper? Had  
 10 he fallen back?  
 11 A. No. He had fell back approximately 20, 30  
 12 yards after he first bumped me.  
 13 Q. All right. So the second impact was about  
 14 as hard as the first impact; right?  
 15 A. Yes, sir.  
 16 Q. What happened immediately after the second  
 17 impact?  
 18 A. Immediately after the second impact, the  
 19 car veered a little more, and immediately  
 20 following that that's when he bumped it  
 21 again on my driver's side bumper and  
 22 spun me out of control. That's when my  
 23 head hit the steering wheel. I snatched

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1 the vehicle. It jumped Highway 21 and  
 2 landed on the opposite side of the highway  
 3 in a ditch on a spinout.  
 4 Q. Okay. So you're saying that the hit where  
 5 he spun you out came fairly quickly after  
 6 the second ram; is that right?  
 7 A. Yes, sir.  
 8 Q. Were you still going about 35 miles an hour  
 9 when the spinout hit occurred?  
 10 A. Yes, sir. Approximately.  
 11 Q. Were you able to take any kind of  
 12 corrective action with the car between the  
 13 time of the second hit and the spinout hit?  
 14 A. After he rammed me the second time, like I  
 15 say, I guess because I wasn't going as  
 16 fast, the car just like jerked. And before  
 17 I can regroup, he had hit me again on the  
 18 bumper. And that's when I spun out  
 19 toward the bluff. My head hit the steering  
 20 wheel. Knowing it's a deep bluff right  
 21 here, I snatched the steering wheel, and  
 22 all I know the car jumped or skid across  
 23 Highway 21. Because when my head came up,

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1 I was on the opposite side of the road in a  
 2 daze. By the time I opened the car door  
 3 they was already out of their vehicle with  
 4 guns drawn.  
 5 Q. Let's talk about your head hitting the  
 6 steering wheel. What part of your head hit  
 7 the steering while?  
 8 A. My right -- left temple.  
 9 Q. Right above your eye there?  
 10 A. Yeah. I've still got a knot up there from  
 11 it.  
 12 Q. And you weren't wearing your seat belt at  
 13 the time; right?  
 14 A. No, sir.  
 15 Q. Was that from the second hit or the spinout  
 16 hit that sent your head into the steering  
 17 wheel?  
 18 A. Had to be the spinout, because when he hit  
 19 me, it like threw me off the seat out of  
 20 control and I just snatched the wheel and  
 21 the car just went where it went.  
 22 Q. So it went all the way across the oncoming  
 23 lane; is that right?

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1 A. Yeah. It went -- When he spun me out,  
 2 the car went off the bluff toward the bluff  
 3 to the right of the road on two wheels. I  
 4 snatched it and all I can remember is it  
 5 clearing the highway or whatever. I ended  
 6 on the opposite side of the road facing the  
 7 way we just came.  
 8 Q. So you went off to the left from your  
 9 direction of travel; is that right?  
 10 A. That's where --  
 11 Q. Your car went to the left?  
 12 A. That's where it landed.  
 13 Q. Your initial direction of travel?  
 14 A. Yes, sir.  
 15 Q. And the stereo was still going the whole  
 16 time; right?  
 17 A. Whole time.  
 18 Q. Between the first time that you were hit  
 19 and what we're calling the spinout hit  
 20 here, did Kevin say anything to you that  
 21 you heard?  
 22 A. No, sir.  
 23 Q. Do you recall saying anything?

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1 A. I was probably mumbling to myself, they're  
2 trying to kill me, what they doing,  
3 something to that effect.  
4 Q. Did you ever think to pick up that gun and  
5 defend yourself with it?  
6 A. No, sir.  
7 Q. Did you have a cell phone with you that day?  
8 A. I'm quite sure I did.  
9 Q. Do you remember what the phone number was?  
10 A. I don't remember.  
11 Q. Did you try to call anybody?  
12 A. No, sir. I didn't have time.  
13 Q. That's a good point. From the time that  
14 you saw that Lincoln break back on County  
15 Road 7 until the time that you came to a  
16 stop on Highway 21, how much time had  
17 passed?  
18 A. If I had to estimate, I'd approximately say  
19 anywhere from five to 10 minutes.  
20 Q. Did Kevin have a cell phone?  
21 A. No, sir.  
22 Q. All right. So in that entire five- to  
23 10-minute period, you never picked up the

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1 phone to make a call?  
2 A. No, sir.  
3 Q. Never thought to call for help?  
4 A. It's a panic situation. You think you're  
5 getting robbed. You ain't got time to call  
6 for no help when I'm driving.  
7 Q. The entire time that passed between the  
8 first time that you were hit until you were  
9 spun out, were there any vehicles on the  
10 road besides yours and the Lincoln?  
11 A. I didn't meet any traffic on County Road 7,  
12 and I don't recall meeting any traffic on  
13 County Road 21 until after the incident was  
14 over.  
15 Q. Did you throw anything out the window at  
16 any time?  
17 A. The only thing I had in my hand was a  
18 cigarette butt. I was smoking previous to  
19 the whole incident. If anything was  
20 thrown, it had to be a cigarette butt  
21 because I didn't have anything else.  
22 Q. Where did you throw that cigarette butt  
23 out? Was it on County Road 7 or Highway

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1 21?  
2 A. Probably had to be on Highway 21.  
3 Q. What is this area here in this intersection  
4 of 7 and 21 like? Is it built up? Are  
5 there a lot of buildings? Is it wooded?  
6 Give me an idea of what the area around  
7 there looks like.  
8 A. This area where --  
9 Q. I tell you what. Let's start on County  
10 Road 7 from basically where you turned off  
11 on 16 up to 21. Are there any houses or  
12 churches or anything like that there?  
13 A. Well, after coming through what's called  
14 the swamp on County Road 16, swampy area,  
15 no houses. I don't know what's in the  
16 woods. No houses. Two bridges. On County  
17 Road 7 there's a church right to your  
18 left. As soon as you turn onto it there's  
19 a church.  
20 Q. At the intersection of 16 and 7?  
21 A. Yeah. That's the intersection. It's a  
22 church there. And immediately turning on  
23 County Road 7 I know there's a house and

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1 another house or two on your left. And  
2 after that --  
3 Q. Is this as you're traveling towards 21 that  
4 you're describing for me?  
5 A. Immediately turning onto County Road 7  
6 approximately a quarter mile you'll run up  
7 on a house and a trailer and approximately  
8 two houses on your left. Then it's just  
9 another wooded stretch and a bridge.  
10 Q. What about on 21 where you turned right  
11 there, what's the area like around there?  
12 A. It's a caution light. It's a big -- two  
13 big ponds and used to be a junkyard. Guy  
14 owned a big house on the hill up from the  
15 ponds and probably two older model houses  
16 on your left. Then you've got a another  
17 stretch -- bridge and stretch or whatever.  
18 Q. Any churches or anything like that around  
19 there?  
20 A. Not right there on Highway 21. Not right  
21 there.  
22 Q. Any gas stations or stores?  
23 A. Yeah. There's a store probably a quarter

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1 mile to your left from the caution light.  
2 Q. Going back towards Braggs?  
3 A. Yeah. Going back towards Braggs.  
4 Community store right there.  
5 Q. What about in the direction that you  
6 traveled on 21, are there any stores or gas  
7 stations or anything like that?  
8 A. The direction I traveled that day going  
9 home?  
10 Q. Yes, sir.  
11 A. No gas station. No store.  
12 Q. And your house is on Highway 21?  
13 A. Right off the dirt road. Turn right off of  
14 21.  
15 Q. About how far back off of 21?  
16 A. Just a couple hundred yards.  
17 Q. Are there any other houses around that one?  
18 A. Yeah. It's a couple houses right at the  
19 caution light about a quarter -- about 2,  
20 300 yards from where I live, caution light,  
21 and there's a couple more residences in the  
22 area.  
23 Q. Is that a different caution light than the

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1 one you've been telling me about on 7/21?  
2 A. Yeah.  
3 Q. So that's further on down?  
4 A. Yeah. Right down from my home there's  
5 another caution light right down there.  
6 Q. You're pointing right about where 21  
7 intersects the Lowndes/Wilcox County line.  
8 A. Yeah.  
9 Q. I'm just trying to describe for the record  
10 where you were pointing.  
11 A. Wilcox County line actually was about a  
12 mile from the --  
13 Q. From your home or from where you wound up?  
14 A. From my home.  
15 Q. How far were you from your home when you  
16 were spun out?  
17 A. Approximately a mile.  
18 Q. Did your car hit anything when it was spun  
19 out other than the Lincoln?  
20 A. Probably embankment is all I can say.  
21 Q. Didn't hit a mailbox or --  
22 A. No. It's no mailbox in the area.  
23 Q. And we showed you already Defendant's

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1 Exhibit 2. Is that where your car came to  
2 rest? Does that depict where your car came  
3 to rest after being spun out?  
4 A. Yes, sir.  
5 (Defendant's Exhibits 7 and 8 was  
6 marked for identification.)  
7 Q. I'm going to show you a couple more  
8 pictures here. I want to show you what  
9 we're going to mark as Defendant's 7 and 8  
10 and let you and your lawyers take a look at  
11 those pictures. Now, do those pictures  
12 also show the way your car wound up on  
13 Highway 21 on June 28th, 2005?  
14 A. Yes, sir.  
15 Q. And we can also see another car in  
16 Defendant's 7 and 8. Is that the Lincoln  
17 that you've been describing?  
18 A. Yes, sir.  
19 Q. Is that how the Lincoln wound up after you  
20 were spun out?  
21 A. They pulled down in the direction. They  
22 pulled off the road in front of me.  
23 Q. And then they turned around and came back;

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1 is that right?  
2 A. No. They pulled down after -- This is  
3 where I landed.  
4 Q. Right.  
5 A. And by the time my head is up off the  
6 steering wheel, my door -- they had already  
7 pulled down and standing in the doorway  
8 with guns drawn.  
9 Q. That's -- Actually you make a good point  
10 there. Let me -- Did you see what happened  
11 to the Lincoln after it made contact --  
12 made the contact with your vehicle that  
13 spun you out?  
14 A. No. Once I went spinning, I didn't see  
15 anything else until the car came to rest.  
16 And like I say, my head hit the steering  
17 wheel. I had like a daze. And when I  
18 leaned back and opened my eyes, the Lincoln  
19 was pulling down right there and they  
20 jumped out of the car with pistols drawn.  
21 I didn't have an opportunity to get out. I  
22 just opened the door and they was already  
23 up.

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1 Q. So you saw the Lincoln -- I want to make  
2 sure I got you right. You saw the Lincoln  
3 come to that position that we see it in in  
4 Defendant's 7 and 8; is that right?  
5 A. Yeah. I saw it pull down.  
6 Q. And is that where that car was when, as you  
7 described, they got out with their guns  
8 drawn?  
9 A. Yes, sir.  
10 Q. So the two cars in 7 and 8 are where they  
11 were at that time that they got out and  
12 drew down on you; is that right?  
13 A. Yes, sir.  
14 Q. Defendant's Exhibit 7, that's the rear of  
15 your car; correct?  
16 A. Yes, sir.  
17 Q. What is that license plate?  
18 A. BRich3.  
19 Q. That's a personalized plate; is that right?  
20 A. Yes, sir.  
21 Q. Did you select that?  
22 A. Yes, sir.  
23 Q. What does that mean?

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1 A. Just a nickname. I had the same license on  
2 two other vehicles. That's just the third  
3 vehicle I had purchased. I had another  
4 Nova.  
5 Q. So your nickname is B Rich; is that right?  
6 A. Uh-huh (positive response).  
7 Q. Where does that come from?  
8 A. Just a nickname. Gained a little weight  
9 over the years. People started calling me  
10 Big Rich. I used to be a skinny guy.  
11 Q. I got you. So the Rich is short for  
12 Richard?  
13 A. Yeah.  
14 Q. I got you. So you at some point had  
15 vehicles that had BRich1 and BRich2 on  
16 them?  
17 A. Yeah.  
18 Q. When you hit your head on the steering  
19 wheel, did it get cut?  
20 A. No, sir. Just a knot.  
21 Q. All right. You saw the Lincoln pull up to  
22 where we see it on 7 and 8 and they got out  
23 with guns drawn. Did both officers get out

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1 with guns drawn?  
2 A. Yes, sir.  
3 Q. You saw the guns, then, at that time?  
4 A. Yes, sir.  
5 Q. Now, when they got out -- and I want to  
6 make sure I understood what you told me --  
7 were you still inside the car or had you  
8 gotten out?  
9 A. No. I hadn't gotten out. When they was  
10 rolling up and jumped out of the car with  
11 guns, I hadn't had an opportunity to get  
12 out. I had opened the door, but like I  
13 say, I was in a daze. And I got out of the  
14 car after that and that's when they started  
15 yelling commands. At that time is where I  
16 seen a shield or whatever they had hanging  
17 around their neck.  
18 Q. Both of them?  
19 A. Well, I know I saw the passenger because he  
20 was more out, which was Chris West. He was  
21 on the passenger's side at this time. I  
22 really couldn't see what Mr. Hutson had on.  
23 Q. Chris West was on the passenger side when

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1 you saw him?  
2 A. Yeah.  
3 Q. And where was Hutson?  
4 A. On the other side of the door.  
5 Q. On the driver's door?  
6 A. Uh-huh (positive response).  
7 Q. Did you see how they got to that position?  
8 Because I think you told me earlier that  
9 Chris was driving.  
10 A. No. I didn't say he was driving. I said  
11 that they got out with their guns drawn. I  
12 never said Chris was driving because Shawn  
13 Hutson was on the passenger side. But all  
14 I knew is when I leaned up Chris West was  
15 on this side of the car because he's the  
16 one that took me down. Shawn Hutson was on  
17 the other door.  
18 Q. Okay. I'm a bit confused here, so we've  
19 got to get this right. When the car pulled  
20 up alongside of you twice, it was Shawn  
21 Hutson who was gesturing at you to pull  
22 over; right?  
23 A. Yeah.

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1 Q. And he was on the passenger's side; right?  
2 Is that right?  
3 A. I understood it to be him. I know it was a  
4 skinnier guy.  
5 Q. I understand you didn't know him at the  
6 time.  
7 A. Uh-huh (positive response).  
8 Q. And Chris and Shawn were the only two in  
9 the Lincoln; right?  
10 A. Yes, sir. The only two.  
11 Q. So doesn't that basically mean that Chris  
12 had to have been driving?  
13 A. Yeah. I guess he was driving, yeah.  
14 Q. So let me go back to my question. Did you  
15 see how it was that Chris wound up on the  
16 passenger's side of the car after you were  
17 spun out and Shawn wound up on the driver's  
18 side?  
19 A. I didn't see that, but it was Chris West  
20 that was on the passenger's side with the  
21 gun on me.  
22 Q. And you said you saw the shield on Shawn;  
23 is that right?

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1 A. Saw the shield on Chris. I really couldn't  
2 see --  
3 Q. Keep me straight. Shield on Chris. Did  
4 you get out of the car on their command or  
5 on your own?  
6 A. Well, after -- Like I say, they was already  
7 out. They may have commanded me, but I was  
8 dizzy in the head. I got out of the car  
9 and stood in the door with my hands up.  
10 And I was asking them what's going on, and  
11 they were just telling me, get on the  
12 ground, get on the ground, get on the  
13 ground.  
14 Q. So you could hear them now; right?  
15 A. Yeah. I could hear them.  
16 Q. Music still going?  
17 A. Still going.  
18 Q. But now you can hear them?  
19 A. Yeah. I'm out of the car.  
20 Q. At this time is the gun that was in your  
21 car where it is in Defendant's 3?  
22 A. Yes, sir. It was laying there.  
23 Q. Just like that?

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1 A. (Witness nods head).  
2 Q. When they told you to get on the ground,  
3 did you get on the ground?  
4 A. No, sir.  
5 Q. Why did you not get on the ground?  
6 A. Because I was agitated. I didn't know what  
7 was going on, why this was happening. But  
8 I still had my hands on top of the door  
9 letting them know I wasn't posing a threat,  
10 but I just didn't feel like getting on the  
11 ground at the time.  
12 Q. Did you say anything to them?  
13 A. I'm quite sure I did.  
14 Q. What did you say?  
15 A. Why y'all doing this, what's going on,  
16 something to that effect, what's this all  
17 about.  
18 Q. At this point you'd seen the badge on  
19 Chris; right?  
20 A. Yeah, I saw it.  
21 Q. So you knew they were police at this time;  
22 right?  
23 A. I did.

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1 Q. What did they say, if anything, when you  
2 said what you said to them?  
3 A. Shawn Hutson, he wasn't focusing on me. He  
4 didn't say anything. Chris West was just  
5 saying get on the ground. He said a couple  
6 of dirty words, too; get on the ground, get  
7 on the ground, get on the ground. And he  
8 just eased up on me and slammed me to the  
9 ground.  
10 Q. You said Shawn wasn't focused on you. What  
11 was he doing?  
12 A. He was more or less watching my cousin.  
13 Q. After y'all came to a stop, what did Kevin  
14 do?  
15 A. I really couldn't tell you what he was  
16 doing. I was focusing on them. After the  
17 car came to a stop and they drew out, my  
18 attention was on them. So I really don't  
19 know what he was doing.  
20 Q. Well, when was the next time that you  
21 became aware of what Kevin was doing?  
22 A. When Shawn Hutson came around and got him  
23 out of the car and put him in cuffs.

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1 Q. Was that before or after Chris West had  
2 approached you?  
3 A. He had already came along and subdued me.  
4 Q. Other than commanding you to get on the  
5 ground initially, did Chris or Shawn say  
6 anything else?  
7 A. At that time I can't recollect. Up until  
8 the point where he -- Chris West put me on  
9 the ground I can't recall anything they  
10 said besides get down.  
11 Q. Did they identify themselves, DTF or  
12 sheriff's department or anything like that?  
13 A. They didn't identify nothing.  
14 Q. Other than the badges that they had on --  
15 well, the badge that Chris had on?  
16 A. The badge.  
17 Q. All right. You said Chris came and  
18 approached you and you were still standing  
19 up at that time; right?  
20 A. Yes, sir.  
21 Q. What happened when he got to you?  
22 A. He got to me, kick slammed me to the  
23 ground.

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1 Q. Describe that for me. You say kick slammed  
2 you to the ground. How did that happen?  
3 A. I had my hands up right above my door. He  
4 eased up on me with the gun drawn and he  
5 got close enough until he grabbed me and  
6 swept my feet with his feet and slammed me  
7 face down on the ground. He put his foot  
8 on my back and handcuffed me. Then he had  
9 his foot on my neck.  
10 Q. He cuffed you behind your back?  
11 A. Yes, sir.  
12 Q. As he was approaching you, did he say  
13 anything to you?  
14 A. I don't remember him saying anything but  
15 just get down and he walked up on me.  
16 Q. Did you say anything back to him as he was  
17 coming up on you?  
18 A. I didn't say anything then.  
19 Q. Did you ever at any time make any move back  
20 inside that car?  
21 A. No, I didn't. I was standing in the car in  
22 a daze and --  
23 Q. You said your hands were up on top of the

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1 car. Were they on top of the --  
2 A. Top of the door. I was standing in the  
3 door with my hands like this (indicating)  
4 so he can clearly see.  
5 Q. We're going to look at Defendant's 2  
6 again. You can see here you've got both  
7 the driver's side front and rear door  
8 open. I'm sure the driver's side rear door  
9 wasn't open while all this was going on;  
10 right? That was later?  
11 A. Yes, sir.  
12 Q. Was the front door open about like it is --  
13 A. Yes.  
14 Q. -- while this initial confrontation between  
15 you and the officers was going on?  
16 A. Yes, sir. I was standing in my doorway  
17 with my hands up right here on top while  
18 they was drawn and commanding me.  
19 Q. Did anybody give any commands to Kevin that  
20 you heard?  
21 A. Like I say, I really can't recall any  
22 commands being given to Kevin, because the  
23 music is still loud and I'm just focusing

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1 on this gun is drawn on me and I can  
2 clearly see what he's doing.  
3 Q. Now, at the point from where Chris drew  
4 down on you until he came up on you, you  
5 got a pretty good look at him; right?  
6 A. Uh-huh (positive response).  
7 Q. What else did he have on him, if anything,  
8 as far as on his person? Did you see any  
9 equipment belt or anything like that?  
10 A. Only thing I can recognize is he had on a  
11 black T-shirt with the shield and he had on  
12 regular short pants like I had on, tennis  
13 shoes or something to that effect.  
14 Q. Did you see anything on his belt?  
15 A. I can't recall. I wasn't paying any  
16 attention to that. All I was focusing on  
17 was the gun on me.  
18 Q. From the time Chris initially yelled at you  
19 to get on the ground until the time that he  
20 approached you and as you said foot-swept  
21 you and cuffed you, did he do anything else  
22 that we haven't talked about?  
23 A. Not from the time he came from there and

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1 foot-swept me on the ground he didn't.  
2 Q. After you were in cuffs and on the ground,  
3 I think you told me earlier that's when  
4 they cuffed Kevin; right?  
5 A. Yes. Shawn Hutson went and pulled him out.  
6 Q. Were you able to see that --  
7 A. Yes.  
8 Q. -- from where you were?  
9 A. Yeah.  
10 Q. How were you -- Let's go back to  
11 Defendant's Exhibit 2 again. Once you were  
12 cuffed and on the ground, can you show me  
13 how you were laying by referencing  
14 Defendant's 2?  
15 A. Well, when he foot-swept me and kicked me  
16 on the ground, I was laying out toward --  
17 like in this direction headed toward this  
18 direction.  
19 Q. So you're out --  
20 A. Out from the door.  
21 Q. -- to the lower part of the picture  
22 underneath the door -- the front door?  
23 A. Out from the door, yeah.

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1 Q. Is that with your head facing back towards  
2 Highway 21?  
3 A. My head is out this way where I can see  
4 Highway 21 and I can see in my car.  
5 Q. Looking at Defendant's 2, where is the  
6 Lincoln at? Can you point for me the  
7 general direction the Lincoln was in?  
8 A. The Lincoln was still up here at the front  
9 where it was.  
10 Q. You're kind of pointing off to the  
11 left-hand side of Defendant's 2 kind of in  
12 the middle; is that right?  
13 A. Up in front of the vehicle where it was  
14 resting on the other picture. The Lincoln  
15 was still there.  
16 Q. How did Kevin get out of the car?  
17 A. Shawn Hutson pulled him out of it.  
18 Q. I understand that. But what side of the  
19 car did he come out of?  
20 A. Passenger's side.  
21 Q. So Shawn came around to the passenger's  
22 side of the car and took him out?  
23 A. Yes, sir.

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1 Q. How did he take him out? Describe that  
2 process for me.  
3 A. Only thing I can see he grabbed him and  
4 pulled him out of the car.  
5 Q. Was it through an open door or through the  
6 window?  
7 A. The door. The door was open.  
8 Q. And what did he do to him once he pulled  
9 him out of the car?  
10 A. Put him in handcuffs and set him up there  
11 on that hill.  
12 Q. Where we see him in Defendant's 7 and 8?  
13 A. Yeah.  
14 Q. Did he pretty much stay there for the rest  
15 of the time until he was taken from the  
16 scene?  
17 A. Yes, sir.  
18 Q. All right. Once Kevin was cuffed, what  
19 happened?  
20 A. Chris West got me up off the ground and put  
21 me back upside my car door. My back door  
22 wasn't open at the time. My back is  
23 against my door and in cuffs, and he

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1 started asking me, you ain't seen the  
2 badge, you ain't see this, you ain't see  
3 that. I said, man, I ain't seen nothing  
4 but the gun. He didn't like what I was  
5 saying, so he grabbed my pants and he  
6 shoved me against the car. I said, man,  
7 what you doing. He started going in my  
8 pockets. I know he took my wallet out. I  
9 didn't even see him take the money out. He  
10 took my wallet out, open it up, throw it  
11 inside my car on the seat.  
12 Q. Which seat? The back seat or the front  
13 seat?  
14 A. It was on the front seat.  
15 Q. Did we see your wallet in any of these  
16 pictures?  
17 A. I didn't see it.  
18 Q. So he searched your pants?  
19 A. Yeah. He put his hands in all my pockets  
20 and he came out with the wallet and looked  
21 in it. And like I say, I didn't see him  
22 come out with the money. But I was still  
23 standing there. He was raving on about why

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1 I ain't stopped, this and that. I told him  
2 I didn't know who he was; I thought you was  
3 somebody trying to rob me. You know who I  
4 was, this and that back and forth.  
5 Q. Let me stop you right there. Other than  
6 your wallet -- You said you didn't see him  
7 take the money out?  
8 A. I didn't see him take it out, but he put  
9 his hand in the pocket where my money was.  
10 I didn't see him take it out.  
11 Q. Did he take anything else out of your  
12 pockets?  
13 A. Just my wallet in my sight. I saw him take  
14 the wallet out and go through it and throw  
15 it down.  
16 Q. Did he search any other part of your person  
17 other than the pockets of your pants?  
18 A. He had -- Like I say, he had his hands  
19 verbally in -- like in the belt part of my  
20 pants and pulled them first like shoved me  
21 against the car. Then he started searching  
22 me. After that he went to the trunk of the  
23 car and started tearing it up, opening it

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1 up.  
2 Q. Okay. About how long did his search of  
3 your person take?  
4 A. I would approximately say 10 minutes.  
5 Q. 10 minutes?  
6 A. Approximately. Because he went through the  
7 trunk and everything.  
8 Q. I'm just talking about your person.  
9 A. Oh, me?  
10 Q. Yeah. Your person.  
11 A. Couple of minutes. Couple of minutes.  
12 Q. While this was going on, were you able to  
13 see or hear what was going on with Kevin?  
14 A. No. I ain't heard -- As far as I know,  
15 Shawn had placed him over there sitting  
16 down. He wasn't going nowhere.  
17 Q. Was Shawn present while you were being  
18 searched by Chris West?  
19 A. Yes, sir.  
20 Q. Was he standing there?  
21 A. He was more or less out around the Lincoln  
22 Town Car around the vehicle. Chris was  
23 searching me, searching the trunk or

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1 whatever. Shawn was more or less over by  
2 the vehicle.  
3 Q. I'm just focusing on the time right now  
4 while Chris was searching your person, not  
5 the vehicle yet. Was Shawn standing  
6 nearby?  
7 A. I can't recollect where he was then. I  
8 know he had got Kevin out of the car and he  
9 wasn't in our immediate space.  
10 Q. All right. Once he got done -- Once Chris  
11 got done searching you, what did he do with  
12 you, if anything?  
13 A. I was standing right there, as I say, in my  
14 car door. The passenger rear door is still  
15 closed. He wanted me to get in the back  
16 seat of the car. I said, man, you see this  
17 tight space; I can't get in there with my  
18 handcuffs on; I'm a big guy; I can't get in  
19 there. He got mad and grabbed me inside my  
20 pants and rammed me against the car and he  
21 snatched me back. That's when my pants hit  
22 the ground off my leg because he busted the  
23 zipper and the button. My pants was on the

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1 ground. I said, man, what you doing. I  
2 said, you see I can't get in there; put me  
3 in the patrol car or whatever you're going  
4 to do. You're going to get in here; such  
5 and such, such and such. So at this time  
6 cars started coming up Highway 21. He  
7 stopped doing what he's doing, went to the  
8 Lincoln Town Car, reached in there, got a  
9 light. He put the light on top of the  
10 car. The light wouldn't even work. He  
11 beat on the light three or four times  
12 before the light started flashing. That's  
13 how I was able to know there was no light  
14 present throughout the whole incident. He  
15 put the light on the car after he had did  
16 all this and I'm watching him doing this.  
17 Q. You watched him take the light out of the  
18 car and put it up on --  
19 A. I watched him reach inside the car and come  
20 out with a light. He stuck it on top of  
21 the car and he beat on it three times  
22 before it even started flashing.  
23 Q. How much did you weigh in June of '05?

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<p>1 A. I was probably weighing about 275, 280 back 2 then. 3 Q. How tall were you? 4 A. 5-9. 5 Q. The shorts you were wearing that day, were 6 they tight on you? Baggy? Were you 7 wearing them low slung? 8 A. Just snug fit, average fit. 9 Q. Did you have a belt on? 10 A. No belt. 11 Q. You were wearing boxers underneath them; is 12 that right? 13 A. Yes, sir. 14 Q. You said the zipper broke on the shorts? 15 A. The zipper bust and the button popped off, 16 because he stuck his hands in the inside of 17 my crotch and gripped the pants and forced 18 me back in the car while I'm already in 19 cuffs. Then he choked me because I was 20 asking what he was doing. I said, man, 21 what this all about. When I wouldn't get 22 in the car -- That's what made me get in 23 the back seat of the car. He verbally</p>	<p>1 that right? 2 A. Full nelson, some type of chokehold. 3 That's all I know. I can't describe 4 exactly how it was. All I know I was being 5 choked. He was in front of me and he was 6 choking me. Cut my air off. 7 Q. Once you got in the car, did he stop 8 choking you? 9 A. He stopped choking me while I was still 10 standing there because I gave up 11 resisting. I told him, okay, I'll get in 12 the car because I couldn't breathe. 13 Q. So you agreed to get in the car and he 14 released his hold; is that right? 15 A. Yes. 16 Q. About how long were you in that hold? 17 A. Long enough for my breath to get cut off. 18 Q. Seconds? Minutes? 19 A. Seconds. Wasn't no minutes. Seconds. 20 Q. 10 seconds? Five seconds? 21 A. I don't know how many seconds. 22 Approximately five to 10 seconds. 23 Q. We do see you in the car in these pictures;</p>
Page 102	Page 104
<p>1 choked me until I couldn't breathe, and 2 that's when I subdued and got in the back 3 seat of the car. 4 Q. Describe for me how he choked you. 5 A. Doing the motion. When he slammed me 6 against the car, I still wouldn't get in 7 the back seat of the car because I 8 couldn't -- it's a small car. I know I 9 couldn't hardly get in there. And I 10 wouldn't obey what he was doing. He said, 11 you're going to get in the back seat of 12 this car because traffic coming at the 13 time. He grabbed one hand on the back of 14 my neck some kind of full nelson choke and 15 my head was like this (indicating). You're 16 going to get in the car. That's what he 17 said. You're going to get in there. And 18 when I stopped -- couldn't breathe, I gave 19 up and crawled in the back seat of the 20 car. You see my legs are still out. I 21 couldn't get my whole body in there. 22 Q. So he had one arm in the front of your neck 23 and one arm in the back of your neck; is</p>	<p>1 right? Let's look at Defendant's 7. Is 2 that you in the back seat of the car there? 3 A. Yes, sir. 4 Q. And Defendant's 8, is that you in the back 5 seat of the car? 6 A. Yes, sir. 7 Q. And I think you told me he searched your 8 car too. Was that before or after he put 9 you in the back seat of your car? 10 A. I know he searched it -- the inside part 11 with me standing right here just reaching 12 in. I'm standing here. He just reached in 13 and he got the keys out during that time 14 and he went to the trunk of the car, opened 15 it with the keys and started going through 16 the trunk while I was standing there. And 17 he came back and slammed the trunk or 18 whatever and came back around. 19 Q. At some point did he find the gun? 20 A. Oh, he already saw the gun. 21 Q. Tell me when you first became aware that he 22 was aware of the gun. 23 A. After he had slammed me down on the ground</p>

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1 and put me in cuffs they saw the gun,  
2 because they was making little smart  
3 comments about the gun on the seat and this  
4 and that.  
5 Q. Who made the comment about the gun?  
6 A. Shawn Hutson. Oh, he got a big gun; oh, it  
7 ain't no cheap gun either; all this and  
8 that. I told them it's not my gun. That's  
9 your gun? I said, it ain't my gun, man.  
10 Q. Had the radio been turned off at this  
11 point?  
12 A. Chris West turned the radio down after he  
13 put me in cuffs.  
14 Q. After he put you in cuffs?  
15 A. Yeah.  
16 Q. Is that about the same time that he found  
17 the gun?  
18 A. Yeah. He saw the gun right after he  
19 reached in the car or whatever.  
20 Q. Did he take the gun, did he move the gun,  
21 or did he just leave it right there where  
22 we see it?  
23 A. He left it right there.

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1 Q. All right. Then he did a complete search  
2 of your car; is that right?  
3 A. He went to the trunk. He already had  
4 visually searched the little front part,  
5 which is not too much concealed. He went  
6 to the trunk and that's where he did most  
7 of the searching, moving stuff doing this  
8 and that, whatever he was doing back  
9 there. He came back a little while where I  
10 was.  
11 Q. Did he bring anything with him when he came  
12 back up there where you were?  
13 A. No, sir.  
14 Q. Did he tell you that he had found anything?  
15 A. No, sir.  
16 Q. About how long did it take him to search  
17 the car?  
18 A. I'd say the whole search probably I'd say  
19 five to 10 minutes.  
20 Q. While Chris was searching the car, what was  
21 Shawn doing?  
22 A. Shawn was back toward the Lincoln Town Car  
23 and Chris made the statement about the gun

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1 or whatever. Then Shawn came over where he  
2 was and they were making little small talk  
3 about the caliber and the model of the gun  
4 or whatever, this and that.  
5 Q. Any other conversation that you heard?  
6 A. No, sir. After that incident, Chris West  
7 took me up there and put me on the hill  
8 beside Kevin.  
9 Q. Took you back out of your car?  
10 A. Yes, sir.  
11 (Defendant's Exhibit 9 was marked  
12 for identification.)  
13 Q. I'm going to show you what we'll mark as  
14 Defendant's Exhibit 9.  
15 A. Uh-huh (positive response).  
16 Q. Mr. Marshall, do you recognize what's in  
17 Defendant's Exhibit 9?  
18 A. Appear to be some money.  
19 Q. Looks like it's on some carpet too; right?  
20 A. Appear to be.  
21 Q. Is that the same kind of carpet that you  
22 have in your Nova?  
23 A. My Nova doesn't even have carpet in it, so

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1 I don't know what that is.  
2 Q. Did you have money like that that day, a  
3 five and what looks like a bunch of ones?  
4 A. I had \$500. If that's the money, I don't  
5 know whose it is. It ain't mine. I had  
6 two \$100 bills and the rest in twenties.  
7 Q. So it's your testimony that that money  
8 wasn't in your car that day?  
9 A. I can't say it wasn't in my car. It may  
10 have been Kevin's money, but it's not mine.  
11 Q. So you don't recognize anything in  
12 Defendant's Exhibit 9 at all?  
13 A. It's not my money.  
14 Q. That's not what I asked you. I understand  
15 that you know that it's money. Do you  
16 recognize what Defendant's Exhibit 9 shows?  
17 A. I don't recognize that.  
18 (Defendant's Exhibits 10 and 11  
19 were marked for identification.)  
20 Q. Mr. Marshall, I'm going to show you two  
21 more pictures, Defendant's 10 and 11. Were  
22 those pictures taken of you on June 28th,  
23 2005?

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<p>1 A. Yes.</p> <p>2 Q. Is that what you were wearing at the time?</p> <p>3 A. Yes.</p> <p>4 Q. And that is you in those pictures; right?</p> <p>5 A. Yes.</p> <p>6 MR. WILFORD: Let's get something</p> <p>7 to eat.</p> <p>8 (Whereupon lunch recess was taken.)</p> <p>9 Q. (Continuing by Mr. Wilford) Mr. Marshall,</p> <p>10 you testified before we took a break that</p> <p>11 at some point you were taken and put over</p> <p>12 on the side of the hill there next to</p> <p>13 Kevin; right?</p> <p>14 A. Yes.</p> <p>15 Q. What, if anything, happened after you were</p> <p>16 put over there by Kevin?</p> <p>17 A. They ran my name, his name in and --</p> <p>18 Q. What do you mean they ran his name in?</p> <p>19 A. Warrant check or whatever, social security</p> <p>20 number. Ran both our names and --</p> <p>21 Q. Did any other police units arrive?</p> <p>22 A. Probably 30 to 45 minutes later they called</p> <p>23 back to Hayneville for a sheriff's deputy</p>	<p>1 hill for 30 to 45 minutes before another</p> <p>2 vehicle came?</p> <p>3 A. Yes. Before the police vehicle came.</p> <p>4 Q. Anything else happen during that time</p> <p>5 besides your information being called in?</p> <p>6 A. Not during that time I was sitting on the</p> <p>7 hill. Nothing happened then.</p> <p>8 Q. So nothing happened between that time and</p> <p>9 the time that another police unit showed</p> <p>10 up; is that right?</p> <p>11 A. No. Nothing happened. The only thing that</p> <p>12 I forgot to leave out that happened is</p> <p>13 backing up to when Chris West initially</p> <p>14 drew down on me he did fire his weapon in</p> <p>15 my direction.</p> <p>16 Q. You forgot to mention that?</p> <p>17 A. Yeah.</p> <p>18 Q. Was that after you had a chance to talk to</p> <p>19 your lawyers at lunchtime?</p> <p>20 MR. LEWIS: Object.</p> <p>21 A. I just --</p> <p>22 MR. LEWIS: Don't discuss anything</p> <p>23 that you and I might have</p>
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<p>1 vehicle. It arrived, which I was placed</p> <p>2 in.</p> <p>3 Q. I'm sorry I interrupted you. So they</p> <p>4 called his information in?</p> <p>5 A. Called both of us in.</p> <p>6 Q. Anything happen after they called that in?</p> <p>7 A. No. We just was sitting there on the grass</p> <p>8 and they was walking around talking among</p> <p>9 themselves. I heard them calling in for</p> <p>10 the vehicle.</p> <p>11 Q. Did they call over a radio or cell phone,</p> <p>12 or how did they do that?</p> <p>13 A. Over the dispatch (indicating).</p> <p>14 Q. You're doing --</p> <p>15 A. Police dispatch.</p> <p>16 Q. Over the radio?</p> <p>17 A. I saw them reach in the car, yeah.</p> <p>18 Q. Could you hear what they were saying?</p> <p>19 A. Only what I could make out of it my social</p> <p>20 security number and name being called and</p> <p>21 they was running or whatever over the loud</p> <p>22 speaker.</p> <p>23 Q. And so you sat there on the side of the</p>	<p>1 talked about.</p> <p>2 Q. I'm not asking about the substance of the</p> <p>3 conversation. I'm just -- Were you</p> <p>4 reminded of it at lunchtime?</p> <p>5 A. No, I wasn't reminded of it.</p> <p>6 Q. Well, what happened with this shooting?</p> <p>7 A. It just -- That's the first thing -- After</p> <p>8 he drew down, he fired the weapon before</p> <p>9 coming to approach me.</p> <p>10 Q. Before who approached you?</p> <p>11 A. Before he approached me he had already</p> <p>12 fired the weapon.</p> <p>13 Q. Let's back up, then, and as you say</p> <p>14 completely regroup. He got out of the car</p> <p>15 and he had his weapon pointed at you; is</p> <p>16 that right?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Did he give you commands?</p> <p>19 A. He said get on the ground or something to</p> <p>20 that effect.</p> <p>21 Q. And you didn't comply with those commands.</p> <p>22 You told me that earlier; right?</p> <p>23 A. No, I didn't comply.</p>

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1 Q. So you were still standing there?  
 2 A. In the doorway, yeah.  
 3 Q. In the doorway of the car?  
 4 A. Uh-huh (positive response).  
 5 Q. And he fired?  
 6 A. Yeah.  
 7 Q. This was after giving you commands and you  
 8 not complying; right?  
 9 A. Yeah. He had given some kind of command.  
 10 Q. And you hadn't complied?  
 11 A. No.  
 12 Q. Where did he shoot?  
 13 A. Right out -- if I may.  
 14 Q. Sure.  
 15 A. In this general direction (indicating).  
 16 Q. We're looking at Defendant's Exhibit 2.  
 17 A. Right down past the doorway.  
 18 Q. You're making a pretty broad motion there.  
 19 A. I'm standing in the doorway, but he fired  
 20 right out from -- past the doorway in this  
 21 direction down --  
 22 Q. Towards the front of your car or --  
 23 A. I heard the bullet hit the ground. I heard

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1 the gunshot. It hit the ground somewhere  
 2 in this direction. He fired down there.  
 3 Q. Did the bullet strike the ground in front  
 4 of you or off to the side of you?  
 5 A. I can't say exactly where it struck,  
 6 gunfire. But I did hear it hit the ground  
 7 in this area right here. I heard it.  
 8 Q. How many times did he shoot?  
 9 A. One shot.  
 10 Q. And did you comply with his commands after  
 11 he shot at the ground?  
 12 A. I still had my hands up over the vehicle.  
 13 I asked him, why are you shooting at me,  
 14 what are you doing, and he was just still  
 15 saying, get on the ground, this or that,  
 16 get on the ground. That's when he was  
 17 walking up on me.  
 18 Q. Okay. So this man just fired a round at  
 19 your feet? This man that you know to be a  
 20 police officer and you still didn't do what  
 21 he said?  
 22 A. He fired at me, but I didn't -- like I  
 23 said, I didn't run out to jump on the

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1 ground. I've been arrested before. That's  
 2 why I had my hands up to show I wasn't  
 3 posing a threat. But I didn't see any  
 4 reason why he had to fire at me.  
 5 Q. Well, when you were arrested before, did  
 6 you do what the police told you to do?  
 7 A. Yeah.  
 8 Q. And you have no idea where the round hit  
 9 the ground other than it was generally  
 10 somewhere out in front of your car on the  
 11 passenger's side?  
 12 A. I can't specifically say where it hit, but  
 13 I know it was right in the direction of the  
 14 front driver's door somewhere before the  
 15 end of the car. I heard it hit the ground  
 16 when he shot.  
 17 Q. Did it kick up any dirt or grass or  
 18 anything like that?  
 19 A. Just like (indicating) quick.  
 20 Q. Did any of it hit you?  
 21 A. No. Didn't no dirt or -- it didn't hit me.  
 22 Q. All right. Up until the point that another  
 23 police vehicle arrived, have you told me

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1 everything that happened out there after  
 2 you were put on the side of the road?  
 3 A. Yeah. Up until he placed me beside Kevin.  
 4 The only other thing happened is the  
 5 vehicle pulled up and they placed me in  
 6 that vehicle and put Kevin in the Lincoln  
 7 Town Car.  
 8 Q. Let's talk about -- How many other vehicles  
 9 showed up?  
 10 A. Just one.  
 11 Q. What kind of car was it?  
 12 A. Brown Ford Crown Vic, county sheriff.  
 13 Q. It was a county sheriff's vehicle?  
 14 A. Yeah.  
 15 Q. All right. Do you know -- How many  
 16 officers showed up in that car?  
 17 A. One officer.  
 18 Q. Do you know the name of that officer?  
 19 A. No, I don't.  
 20 Q. Can you describe him for me?  
 21 A. Appeared to be a younger white guy, kind of  
 22 stocky build, Army cut.  
 23 Q. And you were placed in the back of his car?

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<p>1 A. Yes, sir.</p> <p>2 Q. When did that occur? Was it right after he</p> <p>3 arrived, or how much time passed?</p> <p>4 A. Well, I'll say approximately 10 minutes, 15</p> <p>5 minutes max after he arrived after they</p> <p>6 figured out who was going to get in what.</p> <p>7 The guy placed me in the back of the county</p> <p>8 sheriff car and placed Kevin in the front</p> <p>9 seat of the Lincoln Town Car. And Shawn</p> <p>10 Hutson drove off in my car.</p> <p>11 Q. You watched him drive off in your car?</p> <p>12 A. Uh-huh (positive response). He left first.</p> <p>13 Q. You were still there on the scene?</p> <p>14 A. Uh-huh (positive response).</p> <p>15 Q. How long did you stay there on the scene</p> <p>16 after your car was driven off?</p> <p>17 A. Approximately five minutes.</p> <p>18 Q. Did anything happen during that five</p> <p>19 minutes?</p> <p>20 A. No. I just was driven off by the county</p> <p>21 deputy sheriff.</p> <p>22 Q. Did you leave first, or did Chris leave</p> <p>23 first?</p>	<p>1 A. This would be 263 crossing.</p> <p>2 Q. Right.</p> <p>3 A. I would say somewhere in here right down</p> <p>4 from the turn on County Road -- off County</p> <p>5 Road 7 on 21.</p> <p>6 Q. Looks like you're kind of pointing -- and</p> <p>7 correct me if I'm wrong -- about halfway</p> <p>8 between County Road 7 and your home on</p> <p>9 Highway 21.</p> <p>10 A. Right off County Road 7 probably a couple</p> <p>11 hundred feet. That's where they stopped.</p> <p>12 Q. Did they find anything?</p> <p>13 A. Not to my knowledge. I didn't see them</p> <p>14 find anything.</p> <p>15 Q. Has it come to your attention at some point</p> <p>16 later that they found anything?</p> <p>17 A. It was said that he picked a baggy up</p> <p>18 beside the road or something.</p> <p>19 Q. Did you ever see the baggy?</p> <p>20 A. No, sir.</p> <p>21 Q. How long did it take them to search on the</p> <p>22 side of Highway 21?</p> <p>23 A. I'll say approximately 15 minutes or so.</p>
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<p>1 A. Shawn Hutson left first.</p> <p>2 Q. Yeah. We established that.</p> <p>3 A. Then I left in the deputy sheriff car. And</p> <p>4 we only went halfway up 21 when they</p> <p>5 stopped and got out of the car and started</p> <p>6 looking for something. Shawn Hutson turned</p> <p>7 around in my vehicle and came back and</p> <p>8 stopped and got out with Chris West walking</p> <p>9 down 21 appeared to be looking for</p> <p>10 something. I was in the county sheriff</p> <p>11 car. Kevin was in the Lincoln Town Car</p> <p>12 behind us.</p> <p>13 Q. All right. Where did you stop? Was it</p> <p>14 before County Road 7 or after County Road</p> <p>15 7?</p> <p>16 A. On Highway 21 right up the road. After</p> <p>17 turning on Highway 21, they stopped right</p> <p>18 there and -- all three vehicles.</p> <p>19 Q. I understand it was on Highway 21. I'm</p> <p>20 just trying to figure out. Let's go back</p> <p>21 and look at Defendant's Exhibit 5. About</p> <p>22 where on County Road 21 did they stop and</p> <p>23 look?</p>	<p>1 Q. Was Kevin there, too, in their car?</p> <p>2 A. He was in the Lincoln.</p> <p>3 Q. What happened after they got done</p> <p>4 searching?</p> <p>5 A. Chris West came back to the Lincoln, waved</p> <p>6 Shawn Hutson to go on. And the sheriff car</p> <p>7 pulled off with me and then they stopped at</p> <p>8 the store right up the road I was telling</p> <p>9 you about, Howard's Country Store. Shawn</p> <p>10 Hutson pulled up on the gas tank, put gas</p> <p>11 in my vehicle. Chris West, the deputy, and</p> <p>12 Shawn Hutson went inside the store.</p> <p>13 Probably got something to drink or</p> <p>14 whatever. I had a flat -- They had a flat</p> <p>15 on the sheriff's car. They changed the</p> <p>16 flat while I was still in the car, Chris</p> <p>17 West and the deputy sheriff.</p> <p>18 Q. There at the gas station?</p> <p>19 A. Yes, sir. They changed the flat. And</p> <p>20 Shawn Hutson, he left about 10 minutes</p> <p>21 earlier and went up 21 in my car.</p> <p>22 Q. Was your car almost out of gas?</p> <p>23 A. Yeah. It was on E.</p>

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1 Q. How long did that take there at the gas  
2 station for them to do all that?  
3 A. I'll say approximately another 20 minutes.  
4 Q. Was there any conversation with you that  
5 took place at that time?  
6 A. No. I was in the back seat of the patrol  
7 car the whole time.  
8 Q. Nobody talked to you?  
9 A. No, sir.  
10 Q. Did anything else happen as far as  
11 something happening to you personally while  
12 you were there at the gas station?  
13 A. No, sir.  
14 Q. Just sat there and waited for them?  
15 A. (Witness nods head). Yes, sir.  
16 Q. What happened after the gas station?  
17 A. After changing the tire, Chris West got in  
18 the Lincoln. He left first. The deputy  
19 sheriff got in and proceeded to go to the  
20 Lowndes County Detention Facility.  
21 Q. Between the gas station and the detention  
22 facility, did you have any conversation  
23 with the deputy?

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1 A. No. He didn't say anything.  
2 Q. Did you hear anything on the radio?  
3 A. No, sir.  
4 Q. What happened when you got to the jail --  
5 excuse me -- detention facility?  
6 A. The deputy radioed to come in through the  
7 gate and Chris West came in also. And he  
8 brought -- Deputy got me out of the back  
9 seat of the car and brought us into the  
10 facility into booking.  
11 Q. Anything out of the ordinary happen from  
12 the time you got out of the car and you got  
13 to the booking area?  
14 A. No.  
15 Q. Did you have any conversation with the  
16 deputy?  
17 A. No.  
18 Q. Who escorted you from the car to the  
19 booking area?  
20 A. The deputy.  
21 Q. What happened when you got to the booking  
22 area?  
23 A. I think Chris West told us to stand back

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1 toward the wall. The deputy was standing  
2 over to the right by the counter. Told me  
3 to take off -- Well, he took the cuffs  
4 off. He told me to take off jewelry,  
5 et cetera.  
6 Q. Who told you to do that?  
7 A. Chris West. Told me to take off the  
8 jewelry. So I took the jewelry off, put it  
9 on the counter. And at this point they was  
10 fixing to log whatever possessions in the  
11 booking. Chris West put what was supposed  
12 to have been my money on the counter, which  
13 I see was only five twenties, \$100 bill. I  
14 immediately asked him where is the rest of  
15 my money. The deputy reached to get the  
16 money and tried to count it. Chris West  
17 snatched it out of his hand and told him  
18 don't worry about it, put him in the hole.  
19 They put me in the hole.  
20 Q. How much did he put on the counter?  
21 A. \$100, five twenties.  
22 Q. Five twenties?  
23 A. Uh-huh (positive response).

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1 Q. I take it at some point you had to have  
2 been taken out of handcuffs, right --  
3 A. Yes, sir.  
4 Q. -- to take all your stuff off?  
5 A. Yes, sir.  
6 Q. When were you taken out of handcuffs?  
7 A. Not -- A couple of minutes after coming  
8 into booking after Chris got behind the  
9 desk and told them to take me out of the  
10 cuffs so I can take my belongings off.  
11 Q. Who took you out of the cuffs?  
12 A. The deputy.  
13 Q. Was there anybody present in the room  
14 besides you, the deputy, and Chris?  
15 A. Kevin. And another lady in booking was  
16 behind the desk.  
17 Q. There was a lady in booking?  
18 A. Uh-huh (positive response).  
19 Q. What about Shawn Hutson, was he present?  
20 A. Shawn Hutson wasn't in there.  
21 Q. Where was the lady that you described being  
22 in booking when the discussion of the money  
23 occurred?

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1 A. Standing right there. She was in her  
2 desk. But when Chris came in, she got up  
3 and Chris got in the desk and started  
4 getting the paper or whatever. She was  
5 standing right beside him when he put the  
6 money on the counter and I immediately  
7 said, man, that's not all my money, where  
8 is the rest of my money. And the deputy  
9 reached for it to start counting it and  
10 Chris snatched it from him and told him,  
11 don't worry about it, put him in the hole.  
12 Q. Do you remember what this lady's name was?  
13 A. I can't recall.  
14 Q. Can you describe her for me?  
15 A. I probably know her if I see her. It's  
16 been a while. I've seen her since I've  
17 been back up there. But I probably have to  
18 see her. I'm not sure if it's  
19 Ms. Cottrell. It's one of them. I don't  
20 know who is in booking. It was around  
21 two -- between two and 2:30 when we finally  
22 reached the facility that evening. From 12  
23 that evening when the incident started, it

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1 was two to 2:30 when I finally reached the  
2 building.  
3 Q. You're saying evening. 12 noon?  
4 A. It was somewhere around 12 noon when the  
5 incident began. When I finally arrived  
6 there, it was somewhere between two --  
7 after two o'clock.  
8 Q. P.m. or a.m.?  
9 A. P.m.  
10 Q. Okay. I'm just making sure.  
11 All right. Now, you made a statement  
12 about your money there, a verbal statement;  
13 correct?  
14 A. Yes, sir.  
15 Q. At any time did you ever make a written  
16 statement about your money while you were  
17 in the jail?  
18 A. No, sir.  
19 Q. Did you ever file a grievance?  
20 A. No, sir.  
21 Q. Have you ever filed a report with any  
22 police agency about your money being taken?  
23 A. No, sir.

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1 Q. Did you ever talk to the sheriff about it?  
2 A. No, sir.  
3 Q. Did you ask for any medical attention?  
4 A. I did upon going to jail, but I never did  
5 get any.  
6 Q. When did you first ask for medical  
7 attention?  
8 A. Approximately the next morning I told them  
9 I had a headache and I had bumped my head;  
10 I had lacerations on my wrists from the  
11 cuffs being tight; I need to see a doctor;  
12 but no response.  
13 Q. How did you ask to get treatment?  
14 A. They have a -- press the button for verbal  
15 response and you have to fill out a paper,  
16 a request or something for it. But I never  
17 did get a chance to go.  
18 Q. Did you fill out the paper?  
19 A. Actually, I don't even recall. I can't  
20 really be certain. But I know I mashed the  
21 intercom to request a doctor.  
22 Q. Do you know who you would have spoken to?  
23 A. At the time it was just the jailer on duty

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1 in the booth, whoever was in the booth at  
2 that time.  
3 Q. And you don't know who that is?  
4 A. I can't recall.  
5 Q. Was that the only time you asked?  
6 A. Yes. After I didn't get no reply, I just  
7 left it alone.  
8 Q. Was there anyone who witnessed you asking  
9 for medical attention besides the person  
10 you talked to in the booth?  
11 A. Inmates.  
12 Q. Do you recall any of their names?  
13 A. I don't really -- didn't know anybody in  
14 there. Just dayroom area people. I don't  
15 know any of them.  
16 Q. You didn't know any of them at the time?  
17 A. Not the present day when I requested  
18 medical treatment.  
19 Q. Have you spoken to anybody who was an  
20 inmate in there with you since then?  
21 A. No.  
22 Q. As you sit here today, you can't tell me  
23 any names of any of the inmates who were in

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1 there with you?

2 A. Maybe one or two that I got to know while I

3 was in there, but I haven't seen them since

4 I made bond.

5 Q. Who are they?

6 A. I know Joshua Bullard. He was in there. I

7 know it was somebody else in there I knew.

8 I can't really recall right now off the top

9 of my head.

10 Q. How long were you in the jail after being

11 placed in there on the 28th of June?

12 A. I made bond August 5th.

13 Q. How did you make bond?

14 A. Bail bondsman.

15 Q. Who arranged that?

16 A. My girlfriend and me.

17 Q. Who was your girlfriend?

18 A. Ernestine Powell.

19 Q. Ernestine?

20 A. Uh-huh (positive response).

21 Q. Powell?

22 A. Yes, sir.

23 Q. Are you still in contact with Ms. Powell?

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1 A. Yes.

2 Q. Where does she live?

3 A. Greenville.

4 Q. Have you got an address?

5 A. 22 Cherrywood Lane. She was on my bond.

6 Q. Did she put up the money?

7 A. Half of it.

8 Q. Half?

9 A. (Witness nods head).

10 Q. How much was your bond?

11 A. Initially 10,000. 10,000.

12 Q. There's an allegation in your amended

13 complaint at paragraph 39 that an aunt

14 tried to do a property bond for you. Who

15 was that aunt?

16 A. Marzett Wright.

17 Q. Can you spell that first name for me?

18 A. M-A-R-Z-E-T-T.

19 Q. W-R-I-G-H-T?

20 A. Yes, sir.

21 Q. Where does she live?

22 A. Mosses Highway.

23 Q. Do you have an address for that?

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1 A. Not right off the top of my head I don't.

2 Q. Was it her property that she was going to

3 put up for you?

4 A. Yes, sir.

5 Q. Do you know where that property is?

6 A. It's in Mosses.

7 Q. Is it her residence?

8 A. Yeah. Brick home.

9 Q. What happened with that?

10 A. From my understanding I talked with her

11 three times on the phone. She told me that

12 she contacted Sheriff Vaughner and he told

13 her that on first account that he would

14 give it some thought. Second account he

15 said -- he just blew it off. And the third

16 time he seen her that Wednesday and asked

17 him was he going to let her sign my bond.

18 He told her something to the effect I'm

19 going to let him sit there a while; I'll

20 have to think about it. And after that I

21 didn't even get in contact with her

22 anymore. She wouldn't try to do it, I

23 guess.

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1 Q. That's what supposedly Sheriff Vaughner

2 told her?

3 A. Yeah. That's what she told me Sheriff

4 Vaughner told her. She's the county

5 commissioner over District 5.

6 Q. Do you know what the value of her property

7 is there in Mosses?

8 A. Not exactly. I know it's a Jim Walter Home

9 she had purchased some years ago.

10 Q. Did she own it outright?

11 A. Yes, sir.

12 Q. Did you ever personally speak with Sheriff

13 Vaughner about your bond?

14 A. I requested to talk to Sheriff Vaughner but

15 never came through with the request. But

16 one day he did happen to come in the back

17 area where I did verbally ask him why

18 wouldn't he let my aunt sign my bond, and

19 he act as if he didn't know what I was

20 talking about. He told me, you give her a

21 call and he'll see what he can do. That's

22 what he told me that day.

23 Q. When was that?

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1 A. Approximately a week after I had been in  
2 there, after she told me she had did all of  
3 that.  
4 Q. Okay. Did you have any visitation while  
5 you were in jail?  
6 A. Yes.  
7 Q. Who came to visit you?  
8 A. My aunt came once to retrieve my jewelry  
9 and the \$100.  
10 Q. Is that the same aunt that was going to put  
11 up the house?  
12 A. Shirley Marshall. It's my aunt. It's who  
13 I released \$99 to because I took a dollar  
14 for two aspirin I took in there. She took  
15 my jewelry and \$99 off the book to go  
16 toward my bond.  
17 (Defendant's Exhibit 12 was marked  
18 for identification.)  
19 Q. Since we're talking about that, let me show  
20 you Defendant's Exhibit 12. Have you ever  
21 seen Defendant's Exhibit 12 before,  
22 Mr. Marshall?  
23 A. Yes. I had to sign that to release my

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1 jewelry and the money.  
2 Q. That's your signature there?  
3 A. Yes, sir.  
4 Q. And that's where Ms. Marshall came and  
5 picked up your property and your \$99.50 it  
6 says?  
7 A. Yes, sir.  
8 Q. Anybody else besides Ms. Marshall come and  
9 visit you?  
10 A. Girlfriend, Ernestine.  
11 Q. Anyone else?  
12 A. If anyone else came, I never saw them.  
13 Q. And you were able to make some telephone  
14 calls because you were telling me about  
15 talking to your Aunt Wright.  
16 A. Yes, sir.  
17 Q. Did you make any other telephone calls -- I  
18 tell you what. Let's back up and talk  
19 about the 28th of June when you were  
20 initially brought to the detention  
21 facility. Were you able to make a phone  
22 call that day?  
23 A. Yeah.

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1 Q. Who did you call?  
2 A. My aunt, Shirley Marshall.  
3 Q. Shirley Marshall?  
4 A. Yes, sir.  
5 Q. And what did y'all talk about?  
6 A. I told her that I had been arrested and I  
7 needed her to come up here and see could  
8 she get me out.  
9 Q. And what did she say?  
10 A. Asked me what happened and where is she  
11 going to get the money from. I told her to  
12 come get my money and come get my jewelry  
13 and pawn it and try to get some bail when I  
14 get -- when I get a bond.  
15 Q. What kind of telephone did you use to make  
16 that call?  
17 A. Phone right there on the desk.  
18 Q. Just a regular old phone?  
19 A. I guess the office phone they use in  
20 booking. The phone in booking.  
21 Q. Do they have phones in the detention  
22 facility back in the dayroom areas and the  
23 cell blocks?

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1 A. Yes, sir.  
2 Q. Did you ever make any phone calls on those  
3 phones?  
4 A. Yes, sir.  
5 Q. How does that work?  
6 A. Got to call collect and get somebody on the  
7 other end to accept.  
8 Q. And who did you call on that phone -- on  
9 those phones?  
10 A. In the back?  
11 Q. Yes, sir.  
12 A. Called Marzett Wright a couple of times. I  
13 called my uncle. Uncle tried to post  
14 bond. Didn't come through.  
15 Q. Which uncle was that?  
16 A. My father -- father's brother from New  
17 York. Now stays in Selma.  
18 Q. What's his name?  
19 A. John -- I want to say John Cowans. Call  
20 him Bip.  
21 Q. Bip?  
22 A. Yeah. That's all I know him from my  
23 childhood. Just moved from New York about

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1 three years ago.  
2 Q. Anybody else?  
3 A. I called Shirley and her daughter on  
4 three-way. That's mostly who I was getting  
5 to call. And I had her to call my lawyer,  
6 Charlotte, and go to Charlotte's office for  
7 me.  
8 Q. Who is Shirley's daughter? You said her  
9 daughter.  
10 A. Cherry Marshall.  
11 Q. How old is she?  
12 A. Just estimating. I don't know. She go  
13 along with Kevin. However old Kevin is.  
14 I'm the oldest of all of them. However old  
15 he is. 20-something. They're the same  
16 age.  
17 Q. Did anything happen to you while you were  
18 there at the detention facility?  
19 A. Nothing physical, no.  
20 Q. And you said you were there until the 5th  
21 of August; is that right?  
22 A. Yes, sir.  
23 Q. And you were released on bond?

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1 A. Yes, sir.  
2 Q. You didn't miss any work while you were in  
3 the jail; right?  
4 A. I wasn't working at the time.  
5 Q. So you didn't miss any work?  
6 A. No.  
7 Q. What happened after you got out of jail?  
8 A. Started trying to get a lawyer to see what  
9 was going on with the charges.  
10 Q. What charges did you have as a result of  
11 the June 28th incident?  
12 A. Pistol carrying without a permit and  
13 possession of a controlled substance.  
14 Q. What was the controlled substance?  
15 A. I don't know. That's all they told me,  
16 possession of a controlled substance.  
17 Q. They never told you what it was?  
18 A. No, sir.  
19 Q. Did you ever have to go to trial on those  
20 charges?  
21 A. Yes, sir.  
22 Q. What happened at trial?  
23 A. I came to trial with my lawyer. They

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1 called my name on the docket. And Chris  
2 West called my lawyer in the corner and she  
3 told me that he was throwing it out and I  
4 can go home.  
5 Q. That Chris West was throwing it out?  
6 A. That's who she was in the corner and, you  
7 know, had a little mediation with and came  
8 back to me.  
9 Q. Did you ever learn why it was thrown out?  
10 A. No. I ain't ever known. No. She just  
11 told me they was throwing it out. He asked  
12 her permission to come speak to me and told  
13 me I can pick my vehicle up the next day,  
14 which they had it impounded since that  
15 incident. This was January 4th or 5th I  
16 want to say before the 6th when I went to  
17 court.  
18 Q. Was there any damage to your vehicle?  
19 A. Yeah. Knocked out of alignment. Pipes was  
20 hanging down.  
21 Q. What kind of pipes?  
22 A. Exhaust. Exhaust pipe was rattling. Rear  
23 bumper bent.

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1 Q. Can you show me where on the pictures?  
2 A. You can see right there the bumper is bent  
3 up on the light where he rammed me at. And  
4 you can't really tell, but after I got it  
5 back out of the pound, it just drive like  
6 it wasn't the same car no more.  
7 Q. Looks like when you were describing where  
8 he hit you it was the -- was it the back --  
9 A. Yeah. It was pushed up.  
10 Q. -- driver's side right underneath the  
11 taillight there?  
12 A. And it have been also burglarized while it  
13 was in the pound. All the music equipment  
14 was stolen out, radio. The lock was  
15 jimmied out and the side glass was broke.  
16 Q. Where was the impound at?  
17 A. Randy's Impound in Ft. Deposit.  
18 Q. Did you ever get any money out of them or  
19 any redress for what happened to your car?  
20 A. They told me to call Chris West.  
21 Q. What all was taken out of the car?  
22 A. Stereo from the inside, all speakers,  
23 woofers and amps out of the trunk, CDs,

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<p>1 et cetera.</p> <p>2 Q. Anything else?</p> <p>3 A. That's it.</p> <p>4 Q. What happened to the gun?</p> <p>5 A. I don't even know. All I know they stopped</p> <p>6 the case. I don't know anything else about</p> <p>7 it.</p> <p>8 Q. Did they drop the charge on that too?</p> <p>9 A. Yes.</p> <p>10 Q. Has Mr. McWilliams ever come to you and</p> <p>11 asked for his gun back?</p> <p>12 A. He asked me what happened to it. I told</p> <p>13 him it was in the car that day and as far</p> <p>14 as I know the police got it.</p> <p>15 Q. How many times have y'all talked about that</p> <p>16 gun?</p> <p>17 A. I've seen him on two or three occasions in</p> <p>18 the past two years since the incident and</p> <p>19 he asked me about whatever happened to his</p> <p>20 gun and I told him as far as I know the</p> <p>21 police got it.</p> <p>22 Q. Well, has he blamed you for losing his gun?</p> <p>23 A. I mean, he knows what happened that day.</p>	<p>1 A. No. I don't know anybody who have</p> <p>2 claimed. All I know it was vehicles</p> <p>3 passing along. I'm not sure who witnessed</p> <p>4 it. But not anyone to my knowledge that I</p> <p>5 know.</p> <p>6 Q. You're talking about after y'all came to a</p> <p>7 stop on 21?</p> <p>8 A. Yeah. After we came to a stop it was some</p> <p>9 vehicles started passing by.</p> <p>10 Q. Did you recognize any of those vehicles?</p> <p>11 A. I recognized one vehicle that stopped when</p> <p>12 I was standing beside the road in my</p> <p>13 boxers. It was relative -- a distant</p> <p>14 relative that stay down the road from me.</p> <p>15 And she turned around. Actually that's</p> <p>16 when Chris stopped doing what he was doing</p> <p>17 to go get the light and put on top of the</p> <p>18 car because she slowed down when she saw me</p> <p>19 beside the road and turned around and came</p> <p>20 back down the road and they was waving them</p> <p>21 on. And after that she went back up the</p> <p>22 road. I ain't see her again.</p> <p>23 Q. What's her name?</p>
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<p>1 He ain't really pointing no blame. He just</p> <p>2 asked me was it -- what happened, can he</p> <p>3 go -- can he pick it up. I told him I</p> <p>4 don't know. I went to court and they</p> <p>5 tossed it is all I know.</p> <p>6 Q. Do you know if he's ever tried to get it</p> <p>7 back?</p> <p>8 A. I don't.</p> <p>9 Q. When's the last time you talked to him?</p> <p>10 A. I would have to say a couple months ago.</p> <p>11 Probably a couple months ago last incident.</p> <p>12 Q. Did he ask you about the gun then?</p> <p>13 A. Yeah.</p> <p>14 Q. I'm sorry?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Do you know who the prosecutor was in your</p> <p>17 case?</p> <p>18 A. I really don't even know.</p> <p>19 Q. Other than, of course, Kevin who was in the</p> <p>20 car with you, do you know of anybody else</p> <p>21 who claims to have witnessed the chase from</p> <p>22 County Road 7 up to where you wound up on</p> <p>23 Highway 21?</p>	<p>1 A. Margaret, Margaret Wright.</p> <p>2 Q. Margaret Wright?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And where does she live at? Do you have an</p> <p>5 address?</p> <p>6 A. Right down the road. Dutch Bend area. I</p> <p>7 don't know the number -- address. It's</p> <p>8 right down the road from the residence</p> <p>9 where I was residing at the time.</p> <p>10 Q. Which way?</p> <p>11 A. Approximately this far from where I'm at.</p> <p>12 It's a caution light there.</p> <p>13 Q. She lives down by the caution light past</p> <p>14 your house going out towards Wilcox County?</p> <p>15 A. Yeah.</p> <p>16 Q. Any other vehicles that you recognized pass</p> <p>17 by that day?</p> <p>18 A. I didn't recognize any other vehicle.</p> <p>19 Q. Has anyone come up to you and said they</p> <p>20 witnessed your vehicle being knocked off</p> <p>21 the road?</p> <p>22 A. No, sir.</p> <p>23 Q. Do you know of anyone who has claimed to</p>

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1 have witnessed that?  
2 A. No, sir.  
3 Q. And, again, I'm excluding Kevin because I  
4 know he was involved.  
5 Anyone besides Margaret Wright that  
6 you're aware of who witnessed what happened  
7 after you were stopped there at the side of  
8 the road?  
9 A. No, sir.  
10 Q. Is there anyone else besides you who can  
11 testify about the \$500 that you supposedly  
12 had on you that day?  
13 A. As far as I know Kevin. No one else.  
14 Q. How would Kevin know that you had \$500 on  
15 you that day?  
16 A. Because the motor we was pulling out for  
17 one I had took small -- a payment on from  
18 my cousin. I had sold him the engine. We  
19 was pulling the engine out of his car to  
20 put the engine that I sold him in.  
21 Q. You had already collected payment for that?  
22 A. He had gave me like \$50 toward it. But he  
23 still owed me the balance after we get the

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1 car back running. We was pulling the dead  
2 engine out. But I had sold him an engine,  
3 but we hadn't ever got a chance to put it  
4 in.  
5 Q. So that money that you had that day \$50 of  
6 it was from him. And who is he? What's  
7 his name again?  
8 A. That would be Herman. His name is Herman,  
9 the one that owned the car.  
10 Q. \$50 from Herman and the other \$450 was left  
11 over from your gambling winnings. Is that  
12 what your testimony is?  
13 A. The \$50 he had previously given me -- I had  
14 money that I saved. It may have been the  
15 \$50. But I had \$1,000 from gambling, you  
16 know. That's what was left over from  
17 everything, you know.  
18 Q. So explain to me again how the \$50 for the  
19 engine ties in with Kevin knowing that you  
20 had \$500 on you.  
21 A. Because during the time that Herman came to  
22 purchase the engine, he gave me \$50 toward  
23 it. Kevin would see that I reached in my

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1 pocket and had more than \$50 in my pocket.  
2 He was staying with me at the time.  
3 Q. So he just knows that you had more than \$50  
4 on you?  
5 A. Yes, sir.  
6 Q. Is that what you're telling me?  
7 A. Yeah.  
8 Q. To your knowledge, does he know exactly how  
9 much you had on you?  
10 A. No. I don't think he knows exact amount.  
11 He just knows I had more than that.  
12 Q. What damages are you claiming that you're  
13 entitled to as a result of Chris West's  
14 conduct?  
15 A. Well, for one I can't seem to acquire  
16 employment since this incident. In my  
17 field of warehousing every time I apply for  
18 a job I'm being turned down since the  
19 incident happened. And I usually acquire  
20 employment very rapidly. I claim the  
21 damage to my vehicle that I have lost, my  
22 possessions, lost bond money, loss of time  
23 of suffering in jail for something I didn't

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1 have.  
2 Q. Let me stop you there real quick. Didn't  
3 you tell me that your girlfriend put up the  
4 bond money?  
5 A. She put up half of it. The rest of it was  
6 mine.  
7 Q. How much did you put up?  
8 A. I put up like 450 --  
9 Q. \$450?  
10 A. -- that I recovered from pawning my jewelry  
11 and the money left over that I had on the  
12 book. She put up the rest.  
13 Q. I'm sorry. I interrupted you. The bond  
14 money and what else?  
15 A. Like I said, my vehicle damages I lost  
16 there. And just me sitting in jail for  
17 something I didn't do. I mean, it's just  
18 unfair.  
19 Q. You haven't had any medical expenses;  
20 right?  
21 A. No, sir.  
22 Q. And you weren't employed at the time?  
23 A. No, sir.

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<p>1 Q. You told me that you still have the knot on 2 your head. Are there any other permanent 3 conditions that you have as far as your 4 body goes as a result of what happened on 5 June 28th? 6 A. Just that -- Just a lot of mental anguish, 7 just suffering, anxiety attacks. A lot of 8 nights I can't sleep at night for being 9 shot at. I already been robbed. It took 10 me a while to get over that. I had a gun 11 put in my face behind that. It took me a 12 while to get over that. 13 Q. I'm not asking about your mental condition 14 right now. I'm just asking about your body 15 condition. Anything besides the knot on 16 your head? 17 A. Oh, no. Just that knot left when I hit the 18 steering wheel, as far as that. 19 Q. Describe your mental anguish for me that 20 you're talking about. 21 A. I just -- I just have a lot of nights where 22 I can't sleep, just anxiety attacks a lot 23 about the whole ordeal and --</p>	<p>1 break. 2 (Brief recess was taken.) 3 Q. Just a few more questions, Mr. Marshall, 4 and we'll be done. With respect to the 5 anxiety attacks and things that you were 6 telling me about, have you tried to get any 7 kind of mental health treatment for that? 8 A. Well, right now I'm in dire straits. I 9 can't afford anything. I haven't seeked 10 any professional help for it. I've just 11 been trying to deal with the stress, you 12 know. Somehow I hope it goes away over 13 time. 14 Q. You say you haven't tried. Your 15 interrogatory responses you told us you 16 couldn't afford it. I'm just asking you if 17 you've tried. 18 A. No, sir, I haven't. 19 Q. Has anybody recommended to you that you try 20 to get some mental health treatment? 21 A. I haven't referred to anybody. It's all on 22 my own. 23 Q. After the robbery that you described for us</p>
Page 150	Page 152
<p>1 Q. Describe an anxiety attack for me. 2 A. Just nightmares of being shot at and ran 3 off the road by the police and being 4 suspect every time I'm being sighted in 5 Lowndes County by the police. I'm getting 6 strange looks. Or stopped like the 7 incident where I went to jail. It was 8 supposed to be a traffic stop, but they 9 called Shawn Hutson who was on the drug 10 task force that day. Every time they lay 11 eyes on me they harass me about stuff like 12 that even though I just -- I don't 13 understand. 14 Q. Have you seen Chris West again since that 15 day? 16 A. I haven't seen Chris West since I went to 17 court in January '06. 18 Q. So that's the only time you saw him? 19 A. Uh-huh (positive response). 20 Q. So he hasn't pulled you over since then; 21 right? 22 A. No. I haven't seen him. 23 MR. WILFORD: Let's take a short</p>	<p>1 today, did you get any mental health 2 treatment for that? 3 A. No, sir. 4 Q. Did you try? 5 A. No, sir. 6 Q. Did anybody recommend to you that you 7 needed it? 8 A. Just deal with my own -- on my own. I 9 really don't have anybody but me, so I try 10 to deal with things among myself. But it 11 took a little time for me to get my 12 mind-set back, you know, where I can be out 13 around people. Everybody just -- I feel 14 like they out to get me, you know. 15 Q. Are you set back right now as you put it? 16 A. I'm still having some anxiety attacks at 17 night. Still can't sleep some nights. But 18 if I'm somewhere around some people, you 19 know, I'm fairly being compromised. I kind 20 of cope with it. 21 Q. You told me earlier -- I need to go back on 22 you a little more when you were first 23 brought into booking. Chris West said</p>

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1 something about put him in the hole.  
2 A. Yes, sir.  
3 Q. Were you put in a hole?  
4 A. The holding cell up front. That's what I  
5 meant.  
6 Q. So you were placed in the holding cell?  
7 A. Yes, sir.  
8 Q. At some point you were put back in the  
9 back; is that right?  
10 A. I think later that night dressed me out and  
11 took me to a cell.  
12 Q. So you stayed in a holding cell for a few  
13 hours?  
14 A. Yes, sir.  
15 Q. Is that fair to say?  
16 A. Yes, sir.  
17 Q. I think that's all I have. Thank you very  
18 much.  
19 A. Thanks.  
20 EXAMINATION  
21 BY MR. LEWIS:  
22 Q. I have one question. When you're standing  
23 up there on the side of the road in your

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1 boxer shorts, how were you feeling then?  
2 A. Humiliated because traffic was coming along  
3 and people seeing me beside the road in  
4 cuffs in my underwear.  
5 MR. LEWIS: Okay. That's it.  
6 (Deposition was concluded at  
7 approximately 1:55 p.m.)  
8  
9  
10 \*\*\*\*\*  
11 FURTHER DEPONENT SAITH NOT  
12 \*\*\*\*\*  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

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1 REPORTER'S CERTIFICATE  
2 STATE OF ALABAMA:  
3 MONTGOMERY COUNTY:  
4 I, Lyn Daugherty, Certified Shorthand  
5 Reporter and Commissioner for the State of Alabama  
6 at Large, do hereby certify that I reported the  
7 deposition of:  
8 RICHARD MARSHALL  
9 who was duly sworn by me to speak the truth, the  
10 whole truth and nothing but the truth, in the  
11 matter of:  
12 RICHARD MARSHALL,  
13 Plaintiff,  
14 vs.  
15 CHRIS WEST, in his individual  
16 capacity, LASHUN HUTSON, in his  
17 individual capacity,  
18 Defendants.  
19 IN THE UNITED STATES DISTRICT COURT  
20 FOR THE MIDDLE DISTRICT OF ALABAMA  
21 NORTHERN DIVISION  
22 Civil Action No. 2:06-cv-701-ID.CSC  
23 on Wednesday, November 14, 2007.

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1 The foregoing 155 computer-printed pages  
2 contain a true and correct transcript of the  
3 examination of said witness by counsel for the  
4 parties set out herein. The reading and signing is  
5 hereby waived.  
6 I further certify that I am neither of kin  
7 nor of counsel to the parties to said cause nor in  
8 any manner interested in the results thereof.  
9 This 13th day of December 2007.  
10  
11  
12  
13 Lyn Daugherty, ACCR #66  
14 Expiration Date: 9-30-2008  
15 Certified Court Reporter  
16 And Commissioner for the  
17 State of Alabama at Large  
18  
19  
20  
21  
22  
23

# EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

RICHARD MARSHALL,

Plaintiff,

v.

CHRIS WEST, in his individual capacity,  
LASHUN HUTSON, in his individual  
capacity

Defendants.

CIVIL ACTION NO. 2:06-cv-701-ID-CSC

**PLAINTIFF'S RESPONSE TO DEFENDANT CHRIS WEST'S REQUESTS FOR  
ADMISSIONS**

COMES NOW, Richard Marshal, Plaintiff, in the above-styled cause and pursuant to Rule 36 of the Federal Rules of Civil Procedure and in response to defendant's Request for Admissions, states as follows:

**REQUESTS FOR ADMISSION**

1. Admit or deny that, at the time of the incidents underlying your Amended Complaint, there was a .357 caliber revolver in the car you were driving.

RESPONSE: Admit.

2. Admit or deny that, at the time of the incidents underlying your Amended Complaint, the above-referenced revolver was loaded with one or more bullets.

RESPONSE: Admit.

3. Admit or deny that, at the time of the incidents underlying your Amended Complaint, the above-referenced revolver was lying on the front seat of the car you were driving.

RESPONSE: Admit.



4. Admit or deny that you were the owner of the car you were driving at the time of the incidents alleged in your Amended Complaint.

**RESPONSE: Admit.**

5. Admit or deny that, at the time of the incidents underlying your Complaint, the car driven by the Defendants had a single, rotating blue light.

**RESPONSE: Deny. Light was not activated until after I was in custody.**

6. Admit or deny that, at the time of the incidents underlying your Amended Complaint, you saw the single, rotating blue light while it was activated.

**RESPONSE: Deny. See response to Request for Admissions number 5 herein.**

Admit or deny that, at the time you first observed the Defendants' car, you were not wearing your seatbelt.

**RESPONSE: Admit.**

7. Admit or deny that, at the time of the incidents underlying your Amended Complaint, you refused the directives given to you by the Defendants to pull your car to the side of the road.

**RESPONSE: Admit.**

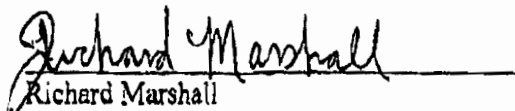
8. Admit or deny that, after the Defendants forced your car to the side of the road, you refused to obey commands to get on the ground.

**RESPONSE: Admit.**

9. Admit or deny that, after the Defendants forced your car to the side of the road, you reached into the car despite the Defendants' verbal commands to the contrary.

**RESPONSE: Cannot answer. Never reached into car. No command not to reach.**

Dated this 23<sup>rd</sup> day of October, 2007.

  
Richard Marshall

SWORN TO and SUBSCRIBED before me this 23<sup>rd</sup> day of October, 2007.


Paula M. Cocker

NOTARY PUBLIC Alabama at Large

(SEAL)

My commission expires 07/09/2011

Respectfully submitted this 23<sup>rd</sup> day of October, 2007.

  
JAY LEWIS (LEW031)  
Attorney for Plaintiff

Law Offices of Jay Lewis, LLC  
P.O. Box 5039  
Montgomery, AL 36103  
(334) 263-7733 (Voice)  
(334) 832-4390 (Fax)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30 day of October, 2007 I have served an exact copy of the foregoing on counsel of record by placing same in the United States mail, first class postage prepaid and properly addressed:

Daryl L. Masters  
Gary L. Willford, Jr.  
Joseph L. Hubbard, Jr.  
WEBB & ELEY, P.C.  
P.O. Box 240909  
Montgomery, AL 36124

  
JAY LEWIS

# EXHIBIT 5

**DEPOSITION OF CHRISTOPHER WEST**

**January 21, 2008**

**Pages 1 through 64**

**PREPARED BY:**

**Haislip, Ragan, Green, Starkie & Watson, P.C.**

**566 South Perry Street**

**Post Office Box 62**

**Montgomery, AL 36104**

**Phone: (334) 263-4455**

**Fax: (334) 263-9167**

**E-mail: haislipragan@charter.net**



Deposition of Christopher West

Marshall vs. West; Hutson

January 21, 2008

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Page 3

1  
2 IN THE UNITED STATES DISTRICT COURT  
3 FOR THE MIDDLE DISTRICT OF ALABAMA  
4 NORTHERN DIVISION

5  
6 RICHARD MARSHALL,  
7 Plaintiff,  
8 vs. CIVIL ACTION NO.  
2:06-cv-701-ID.CSC

9  
10 CHRIS WEST, in his individual  
11 capacity, LASHUN HUTSON, in his  
12 individual capacity,  
13 Defendants.

14 \*\*\*\*\*

15 DEPOSITION OF CHRISTOPHER WEST, taken  
16 pursuant to stipulation and agreement before Tracye  
17 Sadler Blackwell, Certified Court Reporter and  
18 Commissioner for the State of Alabama at Large, in  
19 the Law Offices of Webb & Eley, 7475 Halcyon Pointe  
20 Drive, Montgomery, Alabama, on January 21, 2008,  
21 commencing at approximately 9:10 a.m.

22 \*\*\*\*\*  
23

1 EXAMINATION INDEX

2 BY MR. LEWIS ..... 5

3 PLAINTIFF'S EXHIBITS

4  
5 1 Evidence Submission/Analysis Forms 42  
6 2 Courtesy Warning 46  
7 3 Deposition 47  
8 4 Complaint and Warrant 51  
9 5 Alabama Uniform Incident/Offense Report 52  
10 6 6-28-05 Statement Form of Christopher  
11 West 55

12 \*\*\*\*\*

13 STIPULATIONS

14 It is hereby stipulated and agreed by and  
15 between counsel representing the parties that the  
16 deposition of CHRISTOPHER WEST is taken pursuant to  
17 the Federal Rules of Civil Procedure and that said  
18 deposition may be taken before Tracye Sadler  
19 Blackwell, Certified Court Reporter and  
20 Commissioner for the State of Alabama at Large,  
21 without the formality of a commission, that  
22  
23

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Page 4

1 APPEARANCES

2 ON BEHALF OF THE PLAINTIFF:

3 Mr. Jay Lewis  
4 Law Offices of Jay Lewis  
5 Attorney at Law  
6 847 South McDonough Street  
7 Montgomery, Alabama

8 ON BEHALF OF THE DEFENDANTS:

9 Mr. Daryl L. Masters  
10 WEBB & ELEW, P.C.  
11 Attorneys at Law  
12 7475 Halcyon Pointe Drive  
13 Montgomery, AL 36117  
14 Mr. Rick A. Howard  
15 NIX, HOLTSFORD, GILLILAND, HIGGINS & HITSON  
16 Attorneys at Law  
17 Suite 300  
18 4001 Carmichael Road  
19 Montgomery, AL 36106

20 ALSO PRESENT:

21 Mr. Lashun Hutson  
22  
23

\*\*\*\*\*

1 objections to questions other than objections as to  
2 the form of the question need not be made at this  
3 time but may be reserved for a ruling at such time  
4 as the said deposition may be offered in evidence  
5 or used for any other purpose by either party  
6 provided for by the Statute.

7 It is further stipulated and agreed by and  
8 between counsel representing the parties in this  
9 case that the filing of said deposition is hereby  
10 waived and may be introduced at the trial of this  
11 case or used in any other manner by either party  
12 hereto provided for by the Statute regardless of  
13 the waiving of the filing of the same.

14 It is further stipulated and agreed by and  
15 between the parties hereto and the witness that the  
16 signature of the witness to this deposition is  
17 hereby waived.  
18  
19

20 \*\*\*\*\*  
21  
22  
23

Deposition of Christopher West

Marshall vs. West; Hutson

January 21, 2008

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<p>1 THE COURT REPORTER: Usual</p> <p>2 stipulations?</p> <p>3 MR. MASTERS: Yes.</p> <p>4 MR. LEWIS: Yes.</p> <p>5</p> <p>6 CHRISTOPHER WEST</p> <p>7 The witness, after having first been duly sworn</p> <p>8 to speak the truth, the whole truth, and nothing</p> <p>9 but the truth, testified as follows:</p> <p>10 EXAMINATION</p> <p>11 BY MR. LEWIS:</p> <p>12 Q. Tell us your name, please.</p> <p>13 A. Christopher Stewart West.</p> <p>14 Q. And how are you employed, Mr. West?</p> <p>15 A. By the Lowndes County Sheriff's Department.</p> <p>16 Q. And how long have you been employed by the</p> <p>17 Lowndes County Sheriff's Department?</p> <p>18 A. About 11, 12 years, I think.</p> <p>19 Q. And what's your position with Lowndes</p> <p>20 County Sheriff's Department?</p> <p>21 A. I'm a deputy sheriff.</p> <p>22 Q. Do you hold any particular rank as a deputy</p> <p>23 sheriff?</p>	<p>1 Community Affairs through a grant. There</p> <p>2 are several law enforcement agencies,</p> <p>3 including district attorney's office,</p> <p>4 within our three-county circuit.</p> <p>5 Each year an agency -- all the agencies</p> <p>6 are allowed to place an agent or an officer</p> <p>7 on the drug task force. Some agencies</p> <p>8 choose to participate. Most don't because</p> <p>9 of funding issues. Currently there's the</p> <p>10 Lowndes County Sheriff's Office, the</p> <p>11 Hayneville Police Department, and the</p> <p>12 district attorney's office that are</p> <p>13 participating on the drug task force as</p> <p>14 part of the grant.</p> <p>15 Q. Okay. So those three agencies make up the</p> <p>16 drug task force?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Are there federal agents assigned to that?</p> <p>19 A. No, sir.</p> <p>20 Q. But your salary continues to come from the</p> <p>21 Lowndes County Sheriff's Office?</p> <p>22 A. That's correct.</p> <p>23 Q. And the Lowndes County Sheriff's Office in</p>
Page 6	Page 8
<p>1 A. I'm a lieutenant.</p> <p>2 Q. How many people are employed in the Lowndes</p> <p>3 County Sheriff's Office? And by that I</p> <p>4 mean people who are in law enforcement as</p> <p>5 opposed to jail work.</p> <p>6 A. Between 10 and 12 deputies, I think.</p> <p>7 Q. And what is your particular job as</p> <p>8 lieutenant? Do you have any particular</p> <p>9 responsibility in that position?</p> <p>10 A. Yes, sir. I'm drug task force commander.</p> <p>11 Q. And help me understand the drug task force</p> <p>12 because there's always some confusion about</p> <p>13 whether it's a legal entity, whether it has</p> <p>14 its own personnel practices, whether it has</p> <p>15 its own policies. Tell me, if you will,</p> <p>16 what the 2nd Judicial Drug Task Force is.</p> <p>17 MR. MASTERS: Object to the form.</p> <p>18 Go ahead and answer as best as</p> <p>19 you can, Chris.</p> <p>20 A. The drug task force is a task force that's</p> <p>21 made up of several agencies. We're funded</p> <p>22 by the Department of Justice through the</p> <p>23 Alabama Department of Economic and</p>	<p>1 turn receives a grant to cover your</p> <p>2 activity with the drug task force?</p> <p>3 A. The Lowndes County Commission does, not the</p> <p>4 sheriff's office.</p> <p>5 Q. Does the Lowndes County -- does the drug</p> <p>6 task force have a separate policies and</p> <p>7 procedures manual for you to follow?</p> <p>8 A. Yes, sir, we do.</p> <p>9 Q. And are the policies and procedures in that</p> <p>10 promulgated by the Department of Justice or</p> <p>11 by some individual agency or the task force</p> <p>12 as a group?</p> <p>13 A. A board of directors that form up the drug</p> <p>14 task force. We have a board of directors</p> <p>15 that meet periodically, and if new rules or</p> <p>16 guidelines need to be established, then the</p> <p>17 board members will collectively make a</p> <p>18 decision on how to establish that.</p> <p>19 Q. Okay. And do those guidelines include</p> <p>20 tactical operations, the way you perform</p> <p>21 your duties, the day-to-day activities in</p> <p>22 which you're involved?</p> <p>23 A. Yes, sir.</p>

Deposition of Christopher West

Marshall vs. West; Hutson

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1 Q. Does the Lowndes County Sheriff's Office  
2 have its own set of rules and regulations  
3 for you to go by?  
4 A. Yes.  
5 Q. And who puts those out?  
6 A. The sheriff.  
7 Q. Have you discovered any conflicts between  
8 the sheriff's guidelines and policies and  
9 those of the drug task force?  
10 A. No, sir.  
11 Q. So they're pretty much consistent?  
12 A. Yes, sir.  
13 Q. Let me get a little personal information on  
14 you. What's your address?  
15 A. Physical or mailing?  
16 Q. Physical.  
17 A. 235 -- no. 214 Norman Drive, Fort Deposit.  
18 Q. Okay. 214 Norman Drive?  
19 A. Yes.  
20 Q. And what's your educational background?  
21 A. I graduated high school, currently in  
22 college.  
23 Q. And where are you in college?

Page 10

1 A. Herzing in Birmingham.  
2 Q. Where?  
3 A. Herzing. Herzing College in Birmingham.  
4 Q. Herzing?  
5 A. Yes, sir.  
6 Q. What sort of school is that?  
7 A. It's a private school.  
8 Q. And you're looking for a four-year degree  
9 from there?  
10 A. Yes, sir.  
11 Q. What year are you at Herzing?  
12 A. My final year.  
13 Q. And what's your major?  
14 A. Homeland security and public safety.  
15 Q. When did you graduate from high school?  
16 A. In '86.  
17 Q. Have you had any additional training since  
18 1986 other than what you're getting at  
19 Herzing College?  
20 A. In regards to ...  
21 Q. Your position, your job --  
22 A. Yes, sir.  
23 Q. -- criminal justice, that sort of thing.

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1 A. Yes, sir.  
2 Q. Tell me about those.  
3 A. It's just a --  
4 Q. And I don't want the two-day seminars and  
5 stuff like that.  
6 A. Yeah. There's just numerous ...  
7 Q. Okay. Have you been to the FBI Academy?  
8 A. Yes, sir.  
9 Q. How long a course was that?  
10 A. Ten weeks.  
11 MR. HOWARD: Can we take a second?  
12 MR. LEWIS: Sure.  
13 (A brief recess was taken.)  
14 Q. (Mr. Lewis continuing:) Have you had any  
15 other training courses that have been six  
16 weeks or longer?  
17 A. No, sir, I don't believe so.  
18 Q. Have you been to any law enforcement  
19 advanced driving academies?  
20 A. No, sir.  
21 Q. Let me call your attention to June 28th,  
22 2005. And I'll represent to you that's the  
23 date that everybody agrees that the

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1 incident with Mr. Marshall about which  
2 we're here today occurred. What had you  
3 been doing that entire day?  
4 A. At my office. Got up out of bed that  
5 morning and went to work.  
6 Q. Okay. What projects were you working on  
7 that day?  
8 A. I don't remember.  
9 Q. Okay. Do you remember when you left your  
10 office?  
11 A. No, sir, not exactly.  
12 Q. Okay. At some point that day did you hook  
13 up with Mr. Hutson?  
14 A. Yes, sir.  
15 Q. At what point did you do that?  
16 A. I don't really remember. He may have -- we  
17 may have been in the office together that  
18 morning and discussed Mr. Marshall, or I  
19 may have picked him up at another  
20 location. I just don't remember.  
21 Q. When you say you might have picked him up,  
22 do you recall who was driving?  
23 A. I was driving.

Deposition of Christopher West

Marshall vs. West; Hutson

January 21, 2008

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1 Q. Do you recall what you were driving?  
 2 A. Yes, sir.  
 3 Q. What were you driving?  
 4 A. A Lincoln.  
 5 Q. What model?  
 6 A. Town Car.  
 7 Q. What year? Do you remember?  
 8 A. No, sir, I don't remember.  
 9 Q. And why were you driving a Lincoln Town  
 10 Car?  
 11 A. I don't remember exactly why we were  
 12 driving the Lincoln that day.  
 13 Q. Was that Lincoln a vehicle that had been  
 14 confiscated?  
 15 A. Yes, sir.  
 16 Q. And had there been a condemnation  
 17 proceeding as to that Lincoln?  
 18 A. Yes, sir.  
 19 Q. And it had been condemned and your office  
 20 had it?  
 21 A. Yes, sir.  
 22 Q. Why were you discussing Mr. Marshall that  
 23 day?

1 And it wasn't -- I don't know if you really  
 2 could consider it a dirt road. It's more  
 3 like a -- more like a big driveway that  
 4 kind of went up a hill and then it took a  
 5 right right in front of the mobile home  
 6 where he was living at at the time. And as  
 7 it went on past his house, I guess maybe  
 8 less than a hundred yards or so it kind of  
 9 turned into a little more narrow trail so  
 10 to speak. So I don't even know if it's  
 11 considered -- if it has a name. It could  
 12 be a private drive.  
 13 Q. All right. Did you know Mr. Marshall prior  
 14 to this time?  
 15 A. No, sir.  
 16 Q. Had you had any law enforcement contact  
 17 with Mr. Marshall prior to this time?  
 18 A. Never met him. Never seen him before.  
 19 Q. Had you received any prior information  
 20 about Mr. Marshall prior to that time?  
 21 A. Yes, sir.  
 22 Q. And what information had you received?  
 23 A. The same information in reference to drug

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Page 16

1 A. I had received information that  
 2 Mr. Marshall was selling dope at his  
 3 residence, selling illegal drugs at his  
 4 residence.  
 5 Q. Where did you get that information?  
 6 A. I don't remember.  
 7 Q. Did you make any notes of where you got  
 8 that information from?  
 9 A. I may have.  
 10 Q. Would you have preserved those notes?  
 11 A. No, sir.  
 12 Q. Did your information indicate what sort of  
 13 drugs he was supposed to be selling?  
 14 A. Crack cocaine and marijuana.  
 15 Q. And based on that information what, if  
 16 anything, did you do?  
 17 A. We drove out to Mr. Marshall's residence to  
 18 do a knock-and-talk and to just discuss  
 19 with him the information that we had  
 20 received.  
 21 Q. And where was Mr. Marshall's residence?  
 22 A. Just off Highway 21 on a little dirt road.  
 23 I don't recall the name of the dirt road.

1 activity.  
 2 Q. When you got to his house, what, if  
 3 anything, did you do?  
 4 A. I believe that we knocked on the door and  
 5 no one came to the door. We got back in  
 6 our vehicles and -- or got back in our  
 7 vehicle and left the residence. Agent  
 8 Hutson had some information about another  
 9 place that was, I think -- I think it's  
 10 referred to as the Casey community. It's  
 11 kind of in that area. It's not in the  
 12 exact same area, but it's in that part of  
 13 the county. And when we were leaving  
 14 Mr. Marshall's residence, we were going to  
 15 go to this home down in the Casey  
 16 community.  
 17 Q. And what information did you have about the  
 18 Casey community that led you to go down  
 19 there?  
 20 A. Agent Hutson had that. I'm not exactly --  
 21 I'm not exactly sure.  
 22 Q. So you were looking for Mr. Marshall?  
 23 A. Yes, sir.

Deposition of Christopher West

Marshall vs. West; Hutson

January 21, 2008

Page 17

1 Q. Did you know what kind of car Mr. Marshall  
2 was likely to be driving?  
3 A. Yes, sir.  
4 Q. And what were you on the lookout for?  
5 A. A blue Chevy Nova, older -- older -- older  
6 type vehicle.  
7 Q. And just so I'm clear, you did not -- you  
8 do not recall today how you received the  
9 information about Mr. Marshall allegedly  
10 selling drugs?  
11 A. No, sir. It could have been someone we  
12 interviewed and I just made a note on  
13 some -- a small Post-it, or it could have  
14 been a phone call. I know we received it  
15 on more than one occasion.  
16 Q. And when you received that information, do  
17 you have a present sense of whether or not  
18 you believed that information to be  
19 reliable?  
20 A. If -- if it was a source that was a  
21 reliable source and the time frame allowed,  
22 I would have obtained a search warrant for  
23 his residence. But we're doing a

Page 18

1 knock-and-talk, so maybe -- it could have  
2 been a reliable informant that just knew  
3 that activity was going on and just  
4 referred it to me and we went out to do the  
5 knock-and-talk. If it was reliable, we  
6 would obtain -- I mean, if it was reliable  
7 and within the time frame allowed, we would  
8 have gotten a search warrant.  
9 Q. Okay. So the fact that you didn't get a  
10 search warrant would seem to indicate that  
11 it was not the sort of information that you  
12 would have taken to a judge at that time;  
13 correct?  
14 A. That's correct. Not at that time.  
15 Q. All right. So you're on your way to the  
16 Casey community. How do you get to the  
17 Casey community from where Mr. Marshall's  
18 residence is?  
19 A. You know, I'm not exactly sure because I  
20 don't think I've ever been there before.  
21 But, now, Agent Hutson is familiar with it.  
22 Q. Okay.  
23 A. But I know it's -- you got to -- in the

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1 direction we were coming from, you have to  
2 go down County Road 7. Because we were on  
3 21. I mean, he -- where he lives is just  
4 off 21.  
5 Q. Right.  
6 A. So if you're coming back toward Hayneville  
7 from Mr. Marshall's residence, you take a  
8 left on County Road 7.  
9 Q. And prior to your encountering Mr. Marshall  
10 had you taken that left?  
11 A. Yes, sir.  
12 Q. So you were on County Road 7 at that time?  
13 A. That's right.  
14 Q. What, if anything, happened then?  
15 A. We met Mr. Marshall's vehicle, and I -- I  
16 said, well, that's his vehicle right  
17 there. We turned around and got behind his  
18 vehicle.  
19 Q. Okay. And what then?  
20 A. Mr. Marshall didn't have on a seatbelt. I  
21 observed that he didn't have on a  
22 seatbelt. And we've got a blue-and-white  
23 warning light that is powered -- it's a

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1 12-volt power that you plug into the  
2 cigarette lighter. And I placed it on the  
3 dash of the vehicle and activated that  
4 light behind his vehicle.  
5 Q. What did Mr. Marshall do in response to  
6 that?  
7 A. Kept driving.  
8 Q. How fast were you going at the time you  
9 first activated this light?  
10 A. I don't -- I don't recall.  
11 Q. Well, would you consider it an excessive  
12 rate of -- without regard to miles per  
13 hour, an excessive rate of speed, an  
14 ordinary rate of speed, a slow rate of  
15 speed?  
16 A. An ordinary rate. It wasn't exceeding the  
17 speed limit.  
18 Q. And your position is that Mr. Marshall --  
19 that you activated this light?  
20 A. That's correct.  
21 Q. And the light was working at the time?  
22 A. Yes, sir.  
23 Q. And there were blue-and-white strobes or

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1 flashes coming off the light?  
 2 A. That's correct.  
 3 Q. All right. So Mr. Marshall kept on  
 4 driving?  
 5 A. That's right.  
 6 Q. What did you do then?  
 7 A. Blew the horn, flashed the headlights, and  
 8 even at one point pulled alongside his  
 9 vehicle.  
 10 Q. What color was this Lincoln Town Car you  
 11 were in?  
 12 A. It's kind of a bluish/aquamarine type  
 13 color.  
 14 Q. Doesn't look much like a police car though?  
 15 A. No.  
 16 Q. So you blew the horn, and Mr. Marshall just  
 17 continued to keep driving; right?  
 18 A. Yes, sir.  
 19 Q. You say you pulled up alongside him. Tell  
 20 me about that.  
 21 A. We pulled alongside the vehicle. And, like  
 22 I said, it -- he's got an older car. It  
 23 doesn't run that fast. Pulled alongside

1 Q. At some point you're -- setting the scene  
 2 here, you have turned onto Highway 7. You  
 3 meet him. He's coming toward you?  
 4 A. That's correct.  
 5 Q. You turn around and you're going back,  
 6 what, south on Highway 7 approximately?  
 7 A. Yeah.  
 8 Q. Back toward Highway 21?  
 9 A. That's correct.  
 10 Q. And when I say Highway 7, I mean County  
 11 Road 7.  
 12 A. That's right.  
 13 Q. Heading back toward Highway 21?  
 14 A. Uh-huh (positive response).  
 15 Q. What, if anything, happened when you hit  
 16 Highway 21?  
 17 A. He speeds up a little bit. It's a little  
 18 wider highway than the county road.  
 19 Q. Did he turn onto Highway 21?  
 20 A. Yes, he did.  
 21 Q. Which direction did he turn?  
 22 A. Going toward his residence, away from  
 23 Hayneville toward Wilcox County.

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1 the vehicle. Our windows are down. I  
 2 think Agent Hutson holds up his badge. And  
 3 it's a pretty good -- it's a pretty good  
 4 size badge. It's round and it has a  
 5 leather cover around it. It's a gold badge  
 6 with a black background. And he holds it  
 7 up. I mean, we're probably as close from  
 8 me to you. And he holds up the badge and  
 9 says pull over. And Mr. Marshall is  
 10 yelling and cussing, and he's very -- has a  
 11 very defensive appearance about himself.  
 12 And so Agent Hutson is holding up the  
 13 badge. And then at one point we even  
 14 removed the light from the dash and we've  
 15 got the badge in one hand and the light in  
 16 the other saying pull over. And he's  
 17 looking, I mean, directly at us. And he  
 18 says, you know, fuck y'all or something to  
 19 that nature, you know, I'm not pulling  
 20 over, you know. And so he keeps on going.  
 21 And so we pull -- you know, we back off and  
 22 pull back in behind the vehicle just  
 23 following behind him.

1 And less than maybe 50 to 75 yards he  
 2 throws something out the window that  
 3 actually hits us in the windshield, a  
 4 plastic baggy. I seen enough of those in  
 5 my years. I know what a plastic baggy  
 6 looks like. It hits us and just kind of  
 7 flies off to the side. So I'm making  
 8 mental notes to try to remember where this  
 9 evidence or whatever came out of the  
 10 window.  
 11 And he continues to go in the direction  
 12 of Wilcox County. So we pull up beside him  
 13 again, you know, hey, pull over. We got  
 14 the badge just like this right here and the  
 15 light, you know, pull over. And he's just  
 16 yelling and cussing, you know, fuck you  
 17 all, I'm not doing it, I'm not pulling  
 18 over, you know.  
 19 And so we back off. And I tell Shun, I  
 20 says, hold on. Because he's moving around  
 21 in his seat. There's -- you know, he's  
 22 like looking down. He's -- there's a lot  
 23 of movement going on in the seat with him.

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1 And I tell Shun, I says, you know, you hold  
 2 on because something is going on here.  
 3 And so I bump his vehicle a couple of  
 4 times thinking that that will, you know,  
 5 make him pull over, but he still -- you  
 6 know, he's yelling and he's -- and he sees  
 7 us. I mean, he's looking in the mirror.  
 8 He sees us back -- he sees the blue light.  
 9 And so he ducked, and then I just kind  
 10 of, you know, pushed his bumper a little  
 11 bit. And his vehicle swerves and comes up  
 12 on this side of the road. Never harm  
 13 anything. I don't even think it hurt the  
 14 grass. And he came to rest in the  
 15 vehicle. The vehicle came to rest up on  
 16 the embankment. And I believe I backed up  
 17 because I took a position -- a defensive  
 18 position -- his vehicle -- if my wrist is  
 19 the front of his vehicle, then the nose of  
 20 my vehicle took a position like -- at an  
 21 angle like this.  
 22 And we opened our doors with our  
 23 weapons drawn behind our -- behind the

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1 doors. And I said to him -- I said, get  
 2 out of your vehicle and get on the ground.  
 3 And he just sat there cussing and just  
 4 sweating, and his eyes were red. It was a  
 5 bad situation.  
 6 Q. Let's go back just a little bit. Earlier  
 7 you had said that when you pulled up next  
 8 to him you were as close as you were to  
 9 me --  
 10 A. Yeah.  
 11 Q. -- right now. And I estimate that distance  
 12 to be about four to five feet. Would that  
 13 be accurate?  
 14 A. Or maybe further. Something like that. I  
 15 mean, I could see his face and I'm  
 16 driving. And Shun is even closer than I  
 17 am. But I'm driving. There's nothing else  
 18 on the road. And I'm looking him in his  
 19 face and he's looking at us. And he sees  
 20 the light and the badge is just like this.  
 21 And, like I say, it's a gold badge with a  
 22 black background and a blue-and-white  
 23 strobe just flashing.

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1 Q. I understand --  
 2 MR. MASTERS: Object to the form  
 3 of the previous question.  
 4 Just listen to his questions  
 5 and answer his questions.  
 6 THE WITNESS: Okay. I'm sorry.  
 7 Q. The question -- the cars would have been  
 8 approximately four to five feet apart?  
 9 A. Yes, sir.  
 10 Q. And when you say you pulled alongside him,  
 11 I'm assuming that you mean that your car's  
 12 passenger's side was next to his car's  
 13 driver's side?  
 14 A. Yes, sir.  
 15 Q. And to clarify what you said about how you  
 16 stopped --  
 17 MR. MASTERS: Excuse me. Object  
 18 to the form of the previous  
 19 question.  
 20 Did you hear the  
 21 question, Chris? Which side  
 22 was closest to which?  
 23 THE WITNESS: Shun's side was

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1 closest to his driver's side.  
 2 MR. MASTERS: So your car's  
 3 passenger's side was close to  
 4 his car's driver's side?  
 5 THE WITNESS: That's right.  
 6 MR. MASTERS: I think you said the  
 7 opposite, Jay. I may be  
 8 mistaken.  
 9 MR. LEWIS: Well, I'll -- we'll go  
 10 with the fact that his car --  
 11 that Mr. West's car's  
 12 passenger's side was next to  
 13 Mr. Marshall's driver's side.  
 14 MR. MASTERS: I may be mistaken,  
 15 but I thought you said the  
 16 opposite.  
 17 MR. LEWIS: That's fine.  
 18 Q. But to clarify, you didn't pull over to the  
 19 right to get up next to his car. You  
 20 pulled to the left?  
 21 A. Yeah. I pulled as if I was passing his  
 22 car.  
 23 Q. Right. Okay. And this is a two-lane

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1 highway?  
 2 A. Yes, sir.  
 3 Q. Are you familiar with what a PIT is?  
 4 A. Yes, sir.  
 5 Q. What is a PIT?  
 6 A. It's a -- what's referred to as PIT  
 7 maneuver.  
 8 Q. And that's a precision intervention  
 9 technique or precision interdiction  
 10 technique?  
 11 A. Yes, sir.  
 12 Q. And is that what you performed on  
 13 Mr. Marshall's car?  
 14 A. Yes, sir.  
 15 Q. And to clarify -- correct me if I'm  
 16 wrong -- that's a procedure by which you  
 17 pull up next to the car with your front  
 18 fender next to his rear fender and then  
 19 slow down and simultaneously turn into his  
 20 car bumping it into a turn; correct?  
 21 A. Something of that nature.  
 22 Q. And that's pretty much what you did on that  
 23 occasion?

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1 A. Yes, sir.  
 2 Q. And his car came to rest off the road;  
 3 correct?  
 4 A. Yes, sir.  
 5 Q. Based on what you said.  
 6 And did it come to rest facing back in  
 7 the direction from what you had come?  
 8 A. Yes, sir.  
 9 Q. So instead of going toward Wilcox County,  
 10 it is now headed away from Wilcox County in  
 11 the grass?  
 12 A. That's correct.  
 13 Q. On the opposite side of the road?  
 14 A. Yes, sir.  
 15 Q. You then backed up and angled your car  
 16 toward his car just off the road?  
 17 A. That's correct.  
 18 Q. Okay. I think we've got the scene set.  
 19 And you indicated that you jumped out  
 20 of the car and Mr. Hutson jumped out of the  
 21 car, weapons drawn, and yelled at  
 22 Mr. Marshall to get out of the car?  
 23 A. That's correct.

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1 Q. And what, if anything, was Mr. Marshall  
 2 saying to you at the time?  
 3 A. Cursing.  
 4 Q. Okay. Have any recollection of the  
 5 specific language he was using?  
 6 A. Fuck y'all, why y'all fucking with me,  
 7 things of that nature.  
 8 Q. Going back to when you say he threw a baggy  
 9 out of the car and hit your car. In what  
 10 way did he -- I mean, tell me what you saw  
 11 as that baggy came out of the car.  
 12 A. I saw his arm go up and the bag come out.  
 13 Like I said, we could see him moving around  
 14 in the car.  
 15 Q. And you made note of where that baggy had  
 16 gone off the road?  
 17 A. Yes, sir.  
 18 Q. You've got him in the car. Did he have a  
 19 passenger with him?  
 20 A. Yes, sir.  
 21 Q. And what did the passenger do, if  
 22 anything?  
 23 A. Nothing really.

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1 Q. Just sat there?  
 2 A. Yes, sir.  
 3 Q. Did you hear the passenger cursing?  
 4 A. No, sir.  
 5 Q. And Mr. Marshall's window, was it up or  
 6 down?  
 7 A. Down.  
 8 Q. What's the next thing that happened?  
 9 I know I sound like a prosecutor, but  
 10 what happened then?  
 11 A. Mr. Marshall -- he got out of his car. He  
 12 was standing -- he had the door open and  
 13 was standing between the car and the door.  
 14 And he's yelling and cussing. And I tell  
 15 him several times to get on the ground. He  
 16 will not comply. And several more times I  
 17 say get on the ground, get on the ground  
 18 now. He won't comply. And I fired my  
 19 weapon in the ground, I guess, some  
 20 seven -- six to eight feet out from him  
 21 into the ground.  
 22 At that point he was shocked that that  
 23 even happened. I could see the appearance

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1 on his face. That's when I left from  
2 behind my door, my weapon still pointed at  
3 him -- or my weapon pointed at him, and as  
4 I approached him, I grabbed him. I don't  
5 remember where I grabbed him, but I know I  
6 grabbed him and I put him on the ground.  
7 And he -- he was very resistant.

8 But he was cussing and just combative.  
9 Not very combative, but just not wanting to  
10 comply at all. But I was able to get my  
11 handcuffs out and put the handcuffs on  
12 him. And I think Agent Hutson got the  
13 passenger out and placed the handcuffs on  
14 him.

15 I left him there on the ground after I  
16 got him handcuffed and looked into the  
17 vehicle. On the driver's seat right there  
18 in the middle was a .357 Magnum. And in  
19 the ashtray was .357 rounds. There was  
20 some rounds in the floorboard and might  
21 have been some loose rounds in the seat.  
22 But I know the gun was loaded. And there  
23 was a -- like a liquor flask there in the

1 unit. The marked unit comes out and  
2 transports them. I take some photos. And  
3 that's pretty much the gist of it.

4 Q. Going back to when you had him on the  
5 ground and were doing the search of the  
6 vehicle. Did you also do a search of him,  
7 did you say?

8 A. I patted him, patted his pockets to see if  
9 he had any weapons or anything in his  
10 pockets.

11 Q. Did you remove a wallet?

12 A. I may have. I don't remember.

13 Q. Did you remove any money from him?

14 A. I may have.

15 Q. If you removed any money from him, did you  
16 turn in all of the money you removed from  
17 him?

18 A. Yes, sir.

19 Q. Turned it in to whom?

20 A. The jail.

21 Q. Okay. Anything else you turned in to the  
22 jail other than possibly money?

23 A. No, sir.

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1 seat and, I think, a pack of Swisher Sweet  
2 cigars, a partial pack or something.

3 I get him -- after I see this stuff  
4 right here, I'm -- I pat him down. And I  
5 think -- when I -- when I'm trying to get  
6 him -- when I get him to the ground, he's  
7 got these big -- real big shorts on that  
8 are the bagging shorts. So they basically  
9 come off of him. He doesn't have on a belt  
10 or anything. And so cars are coming by and  
11 he's there in his underwear. So I'm trying  
12 to get him to get into the back seat of the  
13 car, basically trying to save him from some  
14 humiliation because he's standing there in  
15 his boxers, so -- but he won't comply. He  
16 just won't do nothing I'm asking him. So  
17 eventually I get him pushed into the back  
18 seat because, like I say, traffic is coming  
19 by.

20 And the other guy, I think Agent Hutson  
21 sits him over on the embankment. He's  
22 cool. He's not saying anything. He's not  
23 resisting in any manner. I call a marked

1 Q. Okay.

2 A. If he didn't have any weapons --

3 MR. MASTERS: Chris, just answer  
4 his question.

5 THE WITNESS: Okay.

6 Q. Well, what would have been your normal  
7 procedure for dealing with confiscated  
8 property?

9 A. If he didn't have any weapons, normally I  
10 would leave it in his pockets because the  
11 jail is going to pick that stuff up when he  
12 gets there anyway.

13 Q. Do you recall whether you did that in this  
14 case or not?

15 A. No, sir.

16 Q. What did you do then after he was trans --  
17 let me go back.

18 You said that you called for a marked  
19 unit?

20 A. Yes, sir.

21 Q. And did a marked unit arrive?

22 A. Yes, sir.

23 Q. From what jurisdiction was that marked

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<p>1 unit?</p> <p>2 A. Lowndes County.</p> <p>3 Q. And do you recall who was in that marked</p> <p>4 unit?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Who was that?</p> <p>7 A. Deputy Phil Harding.</p> <p>8 Q. And what did Deputy Phil Harding do when he</p> <p>9 got on the scene?</p> <p>10 A. Took Mr. Marshall and put him in the back</p> <p>11 seat of his vehicle.</p> <p>12 Q. By that time had Mr. Marshall calmed down?</p> <p>13 A. No, sir.</p> <p>14 Q. Still combative?</p> <p>15 A. No, sir, not combative. Just still ...</p> <p>16 Q. Hostile?</p> <p>17 A. Yes, sir.</p> <p>18 Q. But you didn't have to -- nobody had to</p> <p>19 fight him to get him in the patrol car?</p> <p>20 A. I don't recall, no, sir.</p> <p>21 Q. And did the patrol car then leave with</p> <p>22 Mr. Marshall?</p> <p>23 A. Yes, sir.</p>	<p>1 Mr. Hutson who did the paperwork and the</p> <p>2 deposition and got the charge --</p> <p>3 A. I think it was me. I think.</p> <p>4 Q. And the only reason I ask that is I</p> <p>5 couldn't read the signatures.</p> <p>6 A. Okay.</p> <p>7 Q. And tell me about the interview you had</p> <p>8 with Mr. Marshall.</p> <p>9 A. He was calm. We talked just like you and I</p> <p>10 are talking now. And I asked him for a</p> <p>11 statement, and he says, I -- he didn't want</p> <p>12 to give me a statement. And so I told him</p> <p>13 I understood, and that was the end of it.</p> <p>14 Q. Any sense of how long that interview took?</p> <p>15 A. 20, 30 minutes, something like that.</p> <p>16 Q. Going back to the time that Mr. Marshall</p> <p>17 was transported in the deputy's patrol</p> <p>18 car. What did you do after that, after</p> <p>19 Mr. Marshall had been taken away?</p> <p>20 A. We -- we actually all left together. I</p> <p>21 think Agent Hutson drove Mr. Marshall's car</p> <p>22 because it was still fine. And I drove the</p> <p>23 Lincoln. Phil Harding came on the marked</p>
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<p>1 Q. What happened to the passenger?</p> <p>2 A. He rode with me.</p> <p>3 Q. And did you have any trouble out of him at</p> <p>4 all?</p> <p>5 A. No, sir.</p> <p>6 Q. Do you recall who he was?</p> <p>7 A. What's that boy's last name?</p> <p>8 I know, but I can't remember right now.</p> <p>9 Q. Had you had any contact with him before?</p> <p>10 A. No, sir.</p> <p>11 Q. Didn't know him?</p> <p>12 A. No, sir.</p> <p>13 Q. When's the next time you saw Mr. Marshall?</p> <p>14 A. I went to interview him a few days later.</p> <p>15 Q. At that time had he been charged with</p> <p>16 anything?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And do you recall how long he was held</p> <p>19 before he was charged?</p> <p>20 A. He was charged the day that I arrested him.</p> <p>21 Q. And you signed a warrant on him?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Do you recall whether it was you or</p>	<p>1 unit. He had Mr. Marshall. His --</p> <p>2 Mr. Marshall's cousin was with me. And</p> <p>3 Shun drove the Nova.</p> <p>4 I think we may have stopped alongside</p> <p>5 the road looking for the evidence or the</p> <p>6 bag that was thrown out. And I think Phil</p> <p>7 pulled over too. And I think when he</p> <p>8 pulled over he caught a nail in his tire,</p> <p>9 and so he had -- he sprung a leak in his</p> <p>10 tire. So we were maybe a mile -- less than</p> <p>11 a mile from Howard Hooks' store. So Phil</p> <p>12 drove his car up to Howard Hooks' store. I</p> <p>13 went up with him while he changed the tire,</p> <p>14 and Shun took the Nova on back to the jail.</p> <p>15 Q. When you pulled over to the side of the</p> <p>16 road, did you retrieve anything?</p> <p>17 A. I don't remember whether we did at that</p> <p>18 time or not. I think we went back and</p> <p>19 later retrieved it. I don't remember.</p> <p>20 Maybe we did. I don't remember exactly.</p> <p>21 Q. What did you retrieve?</p> <p>22 A. A baggy containing residue.</p> <p>23 Q. And what did you do with that baggy?</p>

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1 A. I sent it to forensics.  
 2 Q. Tell me about how you, quote, sent it to  
 3 forensics.  
 4 A. I bagged it up in a brown paper bag because  
 5 we were seeking a fingerprint analysis. I  
 6 labeled it to get -- for fingerprint  
 7 analysis. The fingerprint analysts weren't  
 8 able to recover any fingerprints off of  
 9 it. Once I received it from fingerprint  
 10 analysis, I sent it to forensics, to drug  
 11 analysis, and they weren't able to  
 12 determine because there was just not enough  
 13 residue in the bag.  
 14 So I got both of those back, and they  
 15 were just both -- both of the results. And  
 16 there was --  
 17 Q. There was sufficient residue for you to see  
 18 that there was residue?  
 19 A. Yes, sir.  
 20 Q. And yet it was not sufficient for forensics  
 21 to make a determination?  
 22 A. That's correct.  
 23 Q. And you received a report back from

1 Q. And the following page?  
 2 A. It's the evidence submission form for  
 3 latent prints.  
 4 Q. And the following page?  
 5 A. It's the -- it's just a copy of the same  
 6 form.  
 7 Q. And down at the bottom it would indicate --  
 8 it would seem to indicate that the chain of  
 9 custody as to the page we're on was not as  
 10 complete as the previous page?  
 11 A. Say what, now?  
 12 Q. The previous page of the fingerprint  
 13 examination request seems to show a full  
 14 chain of custody down at the bottom. In  
 15 other words, it shows it was received by,  
 16 returned to, and then returned by.  
 17 A. Oh, okay.  
 18 Q. And there's three signatures. And the next  
 19 page seems to just be the original  
 20 submission.  
 21 A. You mean the final page?  
 22 Q. No, no.  
 23 A. Oh, okay.

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1 forensics?  
 2 A. Yes, sir.  
 3 Q. Let me show you what we will mark as  
 4 Plaintiff's Exhibit Number 1.  
 5 (Plaintiff's Exhibit 1 was marked  
 6 for identification.)  
 7 Q. I'm showing you what we've marked as  
 8 Plaintiff's Exhibit Number 1 and ask you if  
 9 you recognize that.  
 10 A. Yes, sir.  
 11 Q. And what is that, please?  
 12 A. It's an evidence submission form.  
 13 Q. And that's page 1?  
 14 A. That's the submission form.  
 15 Q. Okay. Let's go to page 2. What is that?  
 16 A. That's the receipt of submission from  
 17 forensic sciences.  
 18 Q. And that's done in order to preserve what  
 19 we call the chain of custody?  
 20 A. Yes, sir.  
 21 Q. What is the next page?  
 22 A. This is the certificate of analysis from  
 23 forensic sciences.

1 Q. Okay.  
 2 A. So are you saying that this guy, Shannon  
 3 Fitzgerald, received it from me and then on  
 4 this page right here is the one where the  
 5 actual examination took place?  
 6 Q. Right.  
 7 A. Okay.  
 8 Q. Is that pretty much the way it looks to  
 9 you?  
 10 A. That's the way it appears.  
 11 Q. Okay. And then let's go to the last page.  
 12 What is that?  
 13 A. This is the -- I guess the findings from  
 14 the examination.  
 15 Q. All right. Let's go back to this third,  
 16 fourth -- yeah, the third page, the  
 17 certificate of analysis.  
 18 A. Yeah.  
 19 Q. What was the result of that analysis as far  
 20 as you can tell?  
 21 A. That the analysis of the residue failed to  
 22 reveal the presence of any controlled  
 23 substances.

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1 Q. So they were able to perform an analysis?  
 2 A. Yes, sir.  
 3 Q. But simply couldn't find any controlled  
 4 substance?  
 5 A. Couldn't find any controlled substance.  
 6 Q. And the last page, which is the report of  
 7 the fingerprint analysis, what was the  
 8 finding there?  
 9 A. No latent prints of value were found on the  
 10 evidence.  
 11 Q. Okay. But Mr. Marshall was in fact charged  
 12 with possession of controlled substance?  
 13 A. That's correct.  
 14 Q. Was he charged with anything else?  
 15 A. I don't remember. Pistol without a permit,  
 16 I think.  
 17 Q. Had you seen that pistol in Mr. Marshall's  
 18 possession prior to the time you executed  
 19 the PIT maneuver?  
 20 A. No, sir.  
 21 (Plaintiff's Exhibit 2 was marked  
 22 for identification.)  
 23 Q. Let me show you what's marked as

1 Q. Let me show you what I've marked as  
 2 Plaintiff's Exhibit Number 3 and see if you  
 3 recognize that.  
 4 A. Yes, sir.  
 5 Q. What is that?  
 6 A. It's a deposition.  
 7 Q. And what is a deposition used for in this  
 8 context?  
 9 A. Probable cause for the clerk to issue a  
 10 warrant.  
 11 Q. And this is the deposition relating to  
 12 possession of controlled substance and  
 13 pistol without a permit; correct?  
 14 A. Yes, sir.  
 15 Q. Who filled out this form?  
 16 A. I did.  
 17 Q. Okay. Looking on the second page up at the  
 18 top where it says complainant, whose  
 19 signature is that?  
 20 A. That's my signature.  
 21 Q. And it says offender attempted to elude DTF  
 22 agents at the same time throwing drug  
 23 evidence out the window.

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1 Plaintiff's Exhibit Number 2 and see if you  
 2 recognize that. What is that, please?  
 3 A. It's a warning citation.  
 4 Q. And it was for attempting to elude and no  
 5 seatbelt; correct?  
 6 A. That's correct.  
 7 Q. With regard to that seatbelt violation, do  
 8 you have any idea whether 1971 Chevrolets  
 9 were even equipped with shoulder harnesses?  
 10 A. No, sir.  
 11 Q. Okay. So it may well be that shoulder  
 12 harnesses were not even available as far as  
 13 you know in 1971?  
 14 A. As far as I know.  
 15 MR. MASTERS: Object to the form.  
 16 A. That's correct.  
 17 Q. And if he had had a seatbelt and not a  
 18 shoulder harness, would you have been able  
 19 to see that from your perspective while  
 20 following him?  
 21 A. No, sir.  
 22 (Plaintiff's Exhibit 3 was marked  
 23 for identification.)

1 Going back to what you had said a  
 2 little earlier. You had said when  
 3 Mr. Marshall turned onto Highway 21 toward  
 4 Wilcox County --  
 5 A. Yes, sir.  
 6 Q. -- he sped up a little --  
 7 A. Yes, sir.  
 8 Q. -- but that his car really was not capable  
 9 of going very fast?  
 10 A. No, sir.  
 11 Q. How fast, if you have a judgment, was  
 12 Mr. Marshall going at the time that you  
 13 executed the PIT maneuver?  
 14 A. I'm not sure.  
 15 Q. But you weren't exceeding the speed limit?  
 16 A. I don't remember.  
 17 Q. But you don't have a sense that you were --  
 18 as of today -- and since you don't  
 19 remember, I'm just trying to clarify this.  
 20 Do you have a sense today that you were in  
 21 a high speed chase?  
 22 A. I would say so, yes, sir.  
 23 Q. Okay. So how high do you think the speed

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1 was?  
 2 A. I just -- I don't remember.  
 3 Q. So it said attempted to elude DTF agents at  
 4 the same time. Isn't it true what you  
 5 meant by that was he simply failed to stop?  
 6 MR. MASTERS: Object to the form.  
 7 A. I don't know. I mean, I guess that depends  
 8 on how you look at it.  
 9 Q. I guess it does. But he didn't attempt to  
 10 turn on to any other roads and lead you on  
 11 this path through the woods or anything  
 12 like that?  
 13 A. No, sir.  
 14 Q. Okay. He simply turned back toward what  
 15 you knew to be his residence?  
 16 A. Yes, sir.  
 17 MR. MASTERS: Object to the form.  
 18 Q. And it says throwing drug evidence out of  
 19 the window. But at this point you don't  
 20 have any evidence whatsoever that he  
 21 actually threw drug evidence out?  
 22 A. No, sir.  
 23 Q. Offender was forced from the roadway onto

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1 the opposite side of the roadway where his  
 2 vehicle came to rest. Offender was not  
 3 wearing seatbelt and was highly  
 4 belligerent, cursing, very combative, and  
 5 obviously highly agitated. Have you told  
 6 me everything about that that you can  
 7 recall when you described it earlier?  
 8 A. His demeanor?  
 9 Q. Yeah.  
 10 A. Yeah, I guess. I mean, if I could think of  
 11 a few more words to use, I'd use them.  
 12 Q. Okay. There also was a passenger in the  
 13 vehicle. Both individuals were detained  
 14 and transported to the Lowndes County  
 15 Detention Facility. And have you told me  
 16 everything you can recall about their  
 17 arrest and transportation?  
 18 A. Yes, sir.  
 19 (Plaintiff's Exhibit 4 was marked  
 20 for identification.)  
 21 Q. Okay. Let me show you what's marked as  
 22 Plaintiff's Exhibit Number 4. And this is  
 23 simply a two-page document. Tell me what

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1 this is, please.  
 2 A. It's the complaint and the warrant.  
 3 Q. Okay. And this also bears your signature?  
 4 A. Yes, sir.  
 5 Q. On the first page?  
 6 A. Yes, sir.  
 7 Q. And on the second page down at the bottom  
 8 where it says sheriff, by, is that also  
 9 your signature?  
 10 A. Yes, sir.  
 11 Q. And that's simply the document that makes  
 12 the charge against Mr. Marshall --  
 13 A. That's right.  
 14 Q. -- on the first page, and on the second  
 15 page it's a warrant to arrest him?  
 16 A. That's correct.  
 17 (Plaintiff's Exhibit 5 was marked  
 18 for identification.)  
 19 Q. Okay. And I think the last thing is  
 20 Plaintiff's Exhibit Number 5. Tell me what  
 21 that is, please.  
 22 A. It's an incident/offense report.  
 23 Q. Okay. We've gone through several pieces of

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1 paper that you have either authored or had  
 2 something to do with. Tell me all of the  
 3 paperwork that you have to fill out in  
 4 making an arrest such as you made on  
 5 Mr. Marshall.  
 6 A. You mean for a case file or --  
 7 Q. Yeah. Yeah. Have we in front of us all of  
 8 the paperwork that you have executed on  
 9 Mr. Marshall?  
 10 A. You don't -- my statement form is not here.  
 11 Q. Right. But other than that.  
 12 A. There's an arrest report that's not here.  
 13 Q. Okay. Look on the third page of the  
 14 exhibit I've just handed you.  
 15 A. Okay.  
 16 Q. Is that the arrest report?  
 17 A. This is the arrest report right here.  
 18 Q. Is what you have in these exhibits that  
 19 I've given you all of the paperwork you  
 20 would have completed on Mr. Marshall?  
 21 A. Yes, sir, I believe so.  
 22 Q. All right. Let's go to Plaintiff's Exhibit  
 23 Number 5. That's a uniform

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<p>1 incident/offense report?</p> <p>2 A. That's right.</p> <p>3 Q. And tell me what that's for. What's the</p> <p>4 purpose of that?</p> <p>5 A. It just lists myself as whoever is making</p> <p>6 out the report, the agency, the charges or</p> <p>7 the incident, the place of occurrence, the</p> <p>8 date and time. And there's an area in here</p> <p>9 where you will list items that will be</p> <p>10 recovered or whatever. And then down at</p> <p>11 the bottom -- underneath that it will list</p> <p>12 the dollar amount for the items recovered,</p> <p>13 vehicle information.</p> <p>14 On the back page is the information for</p> <p>15 the offender or whoever, suspect, and then</p> <p>16 an area for the witnesses, a narrative, and</p> <p>17 then an area for the signature of the</p> <p>18 officer or whoever the complainant is and</p> <p>19 case disposition area.</p> <p>20 Q. And did you fill out these first two</p> <p>21 pages?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And that's your signature at the bottom of</p>	<p>1 arrest report?</p> <p>2 A. Yes.</p> <p>3 Q. And you normally maintain those in your</p> <p>4 case file --</p> <p>5 A. That's correct.</p> <p>6 Q. -- in the normal course of business?</p> <p>7 A. That's correct.</p> <p>8 Q. All right. Now, you had mentioned that you</p> <p>9 had a statement also that you wrote out.</p> <p>10 I'm going to show you Plaintiff's Exhibit</p> <p>11 Number 6 and ask you if that's a copy of</p> <p>12 your statement.</p> <p>13 (Plaintiff's Exhibit 6 was marked</p> <p>14 for identification.)</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. Let's go through this for just a</p> <p>17 second if we could.</p> <p>18 A. Okay.</p> <p>19 Q. And I think this will be close to the last</p> <p>20 thing that we're going to do today.</p> <p>21 This was June 28th, 2005. Is that the</p> <p>22 date that all this happened?</p> <p>23 A. Yes, sir.</p>
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<p>1 the second page?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And then tell me about this third page,</p> <p>4 which is the Alabama Uniform Arrest Report.</p> <p>5 A. Basically the jail does this. They do this</p> <p>6 in booking. And it has the -- you see the</p> <p>7 defendant's name up at the top, his height,</p> <p>8 weight, color, all of his information, the</p> <p>9 place -- the occurrence of the arrest and</p> <p>10 the charges and then the officer that did</p> <p>11 the booking.</p> <p>12 Q. And that would be Marilyn Mealing?</p> <p>13 A. That's correct.</p> <p>14 Q. Do you know her?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And is that her signature?</p> <p>17 A. I guess it is.</p> <p>18 Q. Have you seen her signature before?</p> <p>19 A. No.</p> <p>20 Q. Okay. Did you retain a copy of this</p> <p>21 Alabama Uniform Arrest Report?</p> <p>22 A. Yes.</p> <p>23 Q. And is this a true and correct copy of that</p>	<p>1 Q. And the time, 7:32 p.m., is that the time</p> <p>2 that you wrote the statement?</p> <p>3 A. Yes, sir.</p> <p>4 Q. This indicates that the incident happened</p> <p>5 sometime at about one o'clock this</p> <p>6 afternoon --</p> <p>7 A. That's right.</p> <p>8 Q. -- that afternoon.</p> <p>9 A. Uh-huh (positive response).</p> <p>10 Q. And you say that you were traveling with</p> <p>11 Mr. Hutson north on Lowndes County Road 7</p> <p>12 and met Mr. Marshall's blue Chevrolet Nova.</p> <p>13 A. Yes, sir.</p> <p>14 Q. You turned around in an attempt to catch up</p> <p>15 with the vehicle.</p> <p>16 A. That's correct.</p> <p>17 Q. As we caught up with the vehicle, I</p> <p>18 observed that neither the driver nor the</p> <p>19 passenger were wearing seat belts. Why was</p> <p>20 that important to you? Why did you put</p> <p>21 that in there?</p> <p>22 A. Probable cause for the stop.</p> <p>23 Q. But what you really wanted to talk to him</p>

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1 about was drugs?  
 2 A. That's correct.  
 3 Q. And you placed your blue light on the dash  
 4 to gain the attention of the driver. And  
 5 you pulled beside his vehicle, showed  
 6 badges. It says here we showed the driver  
 7 our badges. Earlier you mentioned that  
 8 Mr. Hutson showed the driver his badge.  
 9 Did you show the driver your badge as well?  
 10 A. If that's what the state -- but it also  
 11 says that the driver looked out the window  
 12 and screamed that he wasn't going to pull  
 13 the vehicle over.  
 14 Q. No. The question was, did you show him  
 15 your badge as well?  
 16 A. If that's what the statement says, then I  
 17 did it.  
 18 Q. Do you have any independent recollection of  
 19 showing him your badge?  
 20 A. It's been two years, almost three years. I  
 21 don't -- I can't remember whether I did or  
 22 not.  
 23 Q. Fair enough. And it says that he threw

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1 drug evidence out the window at about the  
 2 102 mile marker. And if I'm correct, based  
 3 on the analysis and your recollection of  
 4 that analysis, there was nothing to  
 5 indicate it was drug evidence, correct, in  
 6 the final analysis?  
 7 A. That's correct.  
 8 Q. But at that time you thought it was drug  
 9 residue?  
 10 A. I still believe that.  
 11 Q. Okay. Did you do any field tests on that  
 12 residue?  
 13 A. No, sir.  
 14 Q. Have you got the equipment to do field  
 15 tests?  
 16 A. Yes, sir.  
 17 Q. You don't have gas chromatography?  
 18 A. No, sir.  
 19 Q. Pursued Mr. Marshall for 2.4 miles.  
 20 Marshall was still responding violently.  
 21 Did he ever make a violent move toward you?  
 22 A. Where are you at?  
 23 Q. I'm down here at the -- close to the bottom

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1 of the page. I instructed Mr. Marshall to  
 2 exit his vehicle and get on the ground.  
 3 A. Okay.  
 4 Q. You see that?  
 5 A. Yes.  
 6 Q. Did he ever make a violent move toward you?  
 7 A. No. We had weapons drawn.  
 8 Q. Okay. Never attempted to hit you or  
 9 anything else?  
 10 A. No. He's at his vehicle. We're at ours.  
 11 Q. Never attempted to run away?  
 12 A. No, sir.  
 13 Q. Fired my service weapon into the ground. I  
 14 meant to ask you about that. Does the  
 15 Lowndes County Sheriff's Office have a use  
 16 of force policy?  
 17 A. Yes, sir.  
 18 Q. And what does that use of force policy say  
 19 about discharging a firearm?  
 20 A. I'm not exactly sure.  
 21 Q. Okay. On the second page it says, again,  
 22 that you located and recovered an empty  
 23 torn baggy that at one time had contained

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1 cocaine. And you've signed that?  
 2 A. Yes, sir.  
 3 Q. Okay. Are you sure that at one time that  
 4 it contained cocaine?  
 5 MR. MASTERS: Object to the form.  
 6 A. Yes, sir.  
 7 Q. And that is your statement that you wrote  
 8 in connection with this case?  
 9 A. Yes, sir.  
 10 Q. How were you dressed that day?  
 11 A. I don't remember.  
 12 Q. Middle of June -- or end of June. Pretty  
 13 hot. Were you probably -- were you  
 14 wearing -- do you recall whether or not you  
 15 would have been wearing short-sleeve shirts  
 16 at that time?  
 17 A. Probably.  
 18 Q. Okay. And the drug task force operates in  
 19 some cases undercover; correct?  
 20 A. That's correct.  
 21 Q. You operate in plain clothes?  
 22 A. That's correct.  
 23 MR. LEWIS: Let me have about five

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<p>1 minutes, Daryl.</p> <p>2 MR. MASTERS. That's fine. Take</p> <p>3 whatever time you need.</p> <p>4 (A brief recess was taken.)</p> <p>5 Q. (Mr. Lewis continuing:) I have just a</p> <p>6 couple more questions.</p> <p>7 Did you fill out a use of force report</p> <p>8 form following the discharge of your</p> <p>9 weapon?</p> <p>10 A. At that time I don't believe our department</p> <p>11 had one. And I still don't believe we had</p> <p>12 one, but what I did do was I did a</p> <p>13 statement and gave it to the sheriff.</p> <p>14 Q. Is that this statement that we've just</p> <p>15 seen?</p> <p>16 A. I think it's the same statement.</p> <p>17 Q. Were you reprimanded in any way for doing</p> <p>18 that?</p> <p>19 A. No, sir.</p> <p>20 Q. Have you ever been reprimanded during your</p> <p>21 period with the Lowndes County Sheriff's</p> <p>22 Office?</p> <p>23 A. Not one time.</p>	<p>1 CHRISTOPHER WEST</p> <p>2 who was duly sworn by me to speak the truth, the</p> <p>3 whole truth and nothing but the truth, in the</p> <p>4 matter of:</p> <p>5 RICHARD MARSHALL,</p> <p>6 Plaintiff,</p> <p>7 vs.</p> <p>8 CHRIS WEST, in his individual</p> <p>9 Capacity, LASHUN HUTSON, in his</p> <p>10 Individual capacity,</p> <p>11 Defendants.</p> <p>12 IN THE UNITED STATES DISTRICT COURT</p> <p>13 FOR THE MIDDLE DISTRICT OF ALABAMA</p> <p>14 NORTHERN DIVISION</p> <p>15 Case Number 2:06-cv-701-ID.CSC</p> <p>16 on January 21, 2008.</p> <p>17 The foregoing 62 computer-printed pages</p> <p>18 contain a true and correct transcript of the</p> <p>19 examination of said witness by counsel for the</p> <p>20 parties set out herein. The reading and signing of</p> <p>21 same is hereby waived.</p> <p>22 I further certify that I am neither of</p> <p>23 kin nor of counsel to the parties to said cause nor</p>
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<p>1 Q. Are you aware of any citizen complaints</p> <p>2 against you that were investigated?</p> <p>3 A. I'm sure citizens have complained.</p> <p>4 MR. LEWIS: I believe that's all I</p> <p>5 have. Thank you.</p> <p>6</p> <p>7 (Deposition concluded at</p> <p>8 approximately 10:35 a.m.)</p> <p>9</p> <p>10 *****</p> <p>11 FURTHER DEPONENT SAITH NOT</p> <p>12 *****</p> <p>13</p> <p>14 REPORTER'S CERTIFICATE</p> <p>15</p> <p>16 STATE OF ALABAMA:</p> <p>17 MONTGOMERY COUNTY:</p> <p>18</p> <p>19 I, Tracye Sadler Blackwell, Certified</p> <p>20 Court Reporter and Commissioner for the State of</p> <p>21 Alabama at Large, do hereby certify that I reported</p> <p>22 the deposition of:</p> <p>23</p>	<p>1 in any manner interested in the results thereof.</p> <p>2 This 6th day of February 2008.</p> <p>3</p> <p>4</p> <p>5</p> <p>6 Tracye Sadler Blackwell</p> <p>7 ACCR No. 294</p> <p>8 Expiration date: 9-30-2008</p> <p>9 Certified Court Reporter</p> <p>10 and Commissioner for the State</p> <p>11 of Alabama at Large</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>